

# The Collection of Hindu Law Texts

Volume II. Part IV.

## YÂJNAVALKYA-SMRTI

WITH THE COMMENTARIES

OF

(1) The MITÂKṢHARÂ by Vijñâneśvara Bhikṣhu

(2) The VÎRAMITRODAYA by Mitramisra

AND

(3) The DÎPAKALIKÂ by Sûlapâṇi  
Vyawahârâdhyâya.

Chapters VIII-XXV (Pages 978-1380)

*An English Translation with notes, explanations etc.*

BY

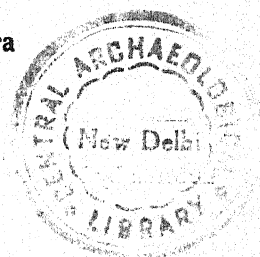
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## NOTE

The Chapter which now follows *i.e.*, the **VIII**,—deals with the Laws of Partition and Inheritance and topics cognate to these. Mr. Colebrooke selected this portion from the **Mitākṣharā** of **Vijñāneśwara** and presented it along with his translations of similar portions from other works describing the whole collection as “Standard Hindu Law Books.” In fact, what is known and referred to as Colebrooke’s **Mitākṣharā** or simply the **Mitākṣharā** in judicial decisions generally is this “Extract from the **Mitākṣharā** composing so much of its work as relates to Inheritance.”

Having regard to the length of the period for which Colebrooke’s translation has been in use and relied upon as an authority, and having regard to its excellence as a translation which has thus acquired a high authority as a work of reference, special care has been taken in the following pages not to disturb the spirit, and generally even the letter, of Colebrooke’s translation, unless a departure was found to be necessary, in which case the differences are explained in the notes below the line.

Another point to be noted is the division into Chapters, Sections and Paragraphs noticeable in Colebrooke’s translation. There is no such division in the original work. It will be remembered that the **Mitākṣharā** is a running commentary written by **Śrī Vijñāneśwara** on the **Smṛti** of **Yājñavalkya**. **Vijñāneśwara** takes the verses of **Yājñavalkya** and appends his gloss thereto, and the English Translation of the First Book and the first seven Chapters of the Second Book of this work published in these “Collections” has closely followed the method adopted by **Vijñāneśwara** so that the translation appearing in this Series presents an exact resemblance of the original text as it is. The same method is continued in the following Chapters. However, for facility of comparison and reference, the divisions made by

Colebrooke are indicated by black figures in the body of the translation, and the portion covered in each page is also indicated in brackets at the top. It is, however, necessary that the text is appreciated in its original form from which this division into Chapters, Sections and Paragraphs appears to have been made by Colebrooke probably for convenience of reference. For it has led at times to serious consequences in that some of the judgments of the Courts appear to have been influenced by this division. Indeed, some of the *placitâ* in Colebrooke's translation have been treated as *verses*, giving an impression that the portion under reference represented *verses* in the original *Smṛti*.

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## NOTE TO ABBREVIATIONS.

<b>Collections</b> —	Stands for	—	“The Collections of Hindu Law Texts” as published in this Series.
<b>Collections Sk.</b>	„ „	—	Collections Sanskrit texts.
<b>Manu</b> —	„ „	—	Manu-Smṛti as published in the Sacred Books of the East Series, Vol. XXV and this Series.
<b>Nârada</b> —	„ „	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
<b>Bṛhaspati</b> —	„ „	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
<b>Gautama</b> —	„ „	—	Ânandâśrama Series No. 61.
<b>Âpastamba</b> —	„ „	—	Sacred Books of the East Series.
<b>Vasiṣṭha</b> —	„ „	—	Sacred Books of the East Series and the Bombay Sanskrit Series.
<b>Kâtyâyana</b> —	„ „	—	Quotations from Kâtyâyana Compiled by Mr. P. V. Kâṇe
<b>Jaiminî</b> —	„ „	—	The Sûtras of Jaiminî, as published in the Ânandâśrama Series No. 54.
<b>Baudhâyana</b> —	„ „	—	Sacred Books of the East Series and the Mysore Sanskrit Series.

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(Colebrooke Ch. I. Sect. I. pp. 1-3)

## CHAPTER VIII.

### \*PAGE 73. On the Distribution of Dâya

(1) Evidence, human and divine, has been severally explained. The distribution of Dâya<sup>1</sup> is now being propounded by the Yogamûrti.<sup>2</sup>

(2) Here the term *Dâya* signifies that wealth<sup>3</sup> which becomes the property of another, solely by reason of his relation<sup>4</sup> to the owner. (3) It is of two sorts. Unobstructible<sup>5</sup> and obstructible. Here the wealth of the father as also

1. The term दाय "Dâya" has been translated by Mr. Colebrooke as "Inheritance" and the expression (दायविभाग) "*Dâya Vibhâga*" as "Partition of heritage." With a view to avoid confusion, the original word *Dâya* has been kept as such. It will be seen that this chapter treats of the Law of Partition as well as of Inheritance, and in both cases the thing that is partitioned or inherited is termed *Dâya*. Of the various meanings which this word has in Sanskrit, the two which are appropriate and call for special attention here are "a share or portion," and "Inheritance or patrimony." See *Krishna vs Sami* 9 Mad. 69.

In the next sentence the Author explains the term *Dâya* to be "that wealth which becomes the property of another, solely by reason of relation to the owner". And this means that 'wealth' which becomes the property of another, in the right of the relation of offspring and parent or the like, which he bears to his father or other relative who is the owner of the wealth, is signified by the term "*Dâya*" [see *Subodhini* p. 42 ll. 30-33.], thus leading to the distinction of the अप्रतिवन्ध and सम्प्रतिवन्ध दाय.

Another term which deserves special attention equally with the term *Dâya* is the word (विभाग) *Vibhâga*. It is found to have been translated as "partition". The better translation however would be "Distribution" as this word would cover the cases both of Partition and of Inheritance.

This passage has been referred to in a number of cases. See particularly *Gandhi Maganlal vs. Bai Jadab* 24 Bom. 192.

2. *Yoga-mûrti*, the 'contemplation itself', the image of holiness i. e. the sage Yājñavalkya.

3. Wealth—the original word is धनम्. It includes all kinds of property and is not necessarily confined to money. As contrasted with the word भू: 'land,' it may mean movables. 'Estate' is comprehensive.

4. Here the word सम्बन्ध 'relation' is confined to and indicative of relation by family connection. See *Jasoda Koer vs Sheo Pershad*; 17 Cal. 33/37, 38.

5. Colebrooke translates as "unobstructed." The original is अप्रतिवन्ध *Aprati-bandha* 'that which is not liable to obstruction.' See § 274 Mayne's Hindu Law. It is that estate in which the future heir has a vested interest by the mere fact of his existence. See observations of Chandavarkar J. in *Bai Parson vs Bai Somli*. 36 Bom. 424.

Definition of Un-  
obstructible and  
Obstructible *Dâya*.

of the (paternal) grandfather becomes the property of his sons or grandsons, in the right of their being his sons and grandsons respectively and thus (this) is an inheritance not liable to obstruct-

5 ion. But property devolves on (paternal<sup>1</sup>) uncle, brothers and the rest, (but only) in the absence of the male issue and of the owner, and thus the existence of a son, and the existence of the owner are impediments<sup>2</sup> (to the devolution); and as it is (only) in the absence of these<sup>3</sup> that the property devolves upon those in their capacity  
10 as uncle and brother (respectively), this is an inheritance subject to obstruction. The same should be understood in respect of their sons and the rest.

(4) Partition<sup>4</sup> (*Vibhâga*) is the adjustment of diverse rights regarding property held collectively by assigning severally (to individuals) particular portions of the aggregate. (5) Entertaining the  
15 same opinions it has been said by *Nârada*<sup>5</sup>: "Where a partition of "the paternal estate is instituted<sup>6</sup> by the sons, it is called by the "learned, Partition of *Dâya* (heritage)—a title at law." "Paternal"

1. This translation is in accordance with the reading adopted in the text of the "Collections" viz. *पितृव्यभ्रातृदीनाम्*. The other reading is *पितृभ्रातृदीनाम्* which appears to have been before Mr. Colebrooke when he published his translation.

2. *Pratibandhak*—

पुत्रसद्भावे स्वामिसद्भावाच्च प्रतिबन्धः—The existence of the son, and also of the owner, are the obstructions. It should be noted that this element of non-vesting distinguishes it from the अप्रतिबन्ध in which the interest being vested, the existence of these two or others do not work as impediments. The right of representation is always given effect to, with the result that the interest of persons in lineal order is unaffected, and is therefore unobstructed. See *Subodhini* also p. 42 l. 34.

3. i. e. the male issue and the owner.

4. Compare with this *Vīramitrodaya* (p. 1000 ll; 6-10) सप्राणस्वत्वाश्रयस्य व्यवस्था-विशेषादिभिः तदपगमे प्रतिनियतस्वत्वाधानं विभागः। See *Lakshmibai vs Ganpat Moroba* 5 B.H.C.R.O.C.J. 128/135; and *Yelliammal vs Katha* 5. Mad. 61/67.

5. Ch. XIII-1.

6. The term in the text is *Kalpyate* (कल्प्यते) "is contemplated or thought of."

here is indicative of any<sup>1</sup> relationship which is a cause of property. Also ( the expression ), " By the sons " indicates relations by propinquity<sup>2</sup> ( in general ).

( 6 ) ( Thus ) the following points have to be expounded in this chapter, viz: (a) at what time, (b) of what, (c) how, and (d) by whom is a partition to be made? Of these, 'at what, time,' 'how,' and 'by whom' will be explained in the course of interpreting the ( several ) verses<sup>3</sup> ( bearing on these subjects ) respectively. 'Of what,' a partition ( may take place ), is the only subject ( to be ) considered here.

( 7 ) Does the right of ownership arise after partition,<sup>4</sup> or does partition take place of property after there was the right of ownership? Here, the right of ownership is itself being explained. ( And the question is ) whether the right of ownership is deducible from Sâstra alone, or whether it may be obtained from other ( means of ) proof?

1. " Any relationship स्वन्निमित्तसंबन्धोपलक्षणम् literally when translated it would be "is inclusive by extension of relationship which is a cause of property." Colebrooke has translated it as if the original were संबन्धमात्रोपलक्षणम्. The sense indicated appears to be so.

In this sense, any relationship i.e. not necessarily father's ( पित्र्य ), which entitles the claimant to take the property; not necessarily agnatic or cognatic, but generally a claim based on legal title.

But the legal title is limited by the next line to propinquity प्रत्यासत्ति—which has been brought in the explanation of तन्वैः —by the sons.

2. The Viramitrodaya makes it further clear and restricts it to relations connected by lineal consanguinity. See also Subodhini Text p. 43 ll. 9-11. Tr. p. 109 ll. 18-24.

Thus while the interpretations of the Mitākṣharâ and the Viramitrodaya point more to a coparcenary body, the Dâya Bhâga extends it to a wider body viz. the joint family. संबन्धिमार्गेण सम्बन्धिमार्गधनविभागोऽपि दायभागपदप्रयोगात्, ... अत एव... मात्रादिधनविभागमप्युपदर्शितवान्—"The term Dâya Bhâga is used for a division of the goods of any relation by any relations. Accordingly Nârada has pointed out the distribution of the property of the mother and like others."

It should be noted that this divergence between the two points of view is in keeping with their respective backgrounds. For, while the remarks of the Mitākṣharâ, Viśvarûpa and Viramitrodaya and others are introductory of the verse II. 115 which treats of the partition by the father, the Dâya Bhâga treats generally of partition.

3. Of Yājñavalkya.

4. See Subodhini, Text p. 43, ll. 16-20. Tr. p. 109, ll. 3-15.

(8) Here<sup>1</sup> (it may be said that) it is proper to say that it is deducible from Sâstra alone, on account of the text of **Gautama**<sup>2</sup> : “An (individual becomes) owner by inheritance, purchase, partition, seizure,<sup>3</sup> or finding. Acceptance is for  
 5 “a Brâhmana an additional (mode of acquisition); conquest for a Kṣhat  
 “riya, (and) gain (by labour) for a Vaiśya or Sâdra”. If the right of ownership be deducible from other (means of) proof, this text would not have any force.<sup>4</sup> So **Manu**, while discussing the extended<sup>5</sup> appli-  
 10 “wealth from a man who took<sup>7</sup> what was not given to him, is regarded  
 “precisely as a thief, even though he obtain it by sacrificing for such  
 “a man or by teaching him”. If the right of ownership were (deducible from) merely temporal (sources), the rule which directs the punish-  
 15 ment of such as obtain wealth by officiating at religious rites, or by similar means, from one ‘who took what was not given to him,’ would be irrelevant. Moreover, were (the right of) ownership a  
 (purely) worldly matter<sup>8</sup> one should not say: “my property has  
 “been wrongfully taken by him”; for according to the above assumption the ownership would be with the trespasser. Now (if it be said  
 20 that because) the property of another was seized by this man, and  
 (that therefore it) does not become the property of the usurper,  
 (the answer is) then no doubt can arise, whether it appertain to one  
 or the other, just as would be the case in regard to the distinction of

1. The Author sets out the opponent's argument which is called the पुत्रपक्ष.

2. Ch. X. 39-42.

3. Cf. Apprehensio, vel Occupatio.

4. Lit: it would be meaningless. The original is नेदं वचनं अर्थवन्मयात्. “This text would have no meaning.”

5. अनिदिश means “an extended application or application by analogy”  
 अनिदिशो नाम इतरधर्मस्य इतरस्मिन् प्रयोगाय अदिशः ।

also अन्यत्रैव प्रणीतायाः कृत्स्नाया धर्मसंहतेः । अन्यत्र कार्यतः प्राप्तिरनिदिशः स उच्यते ॥  
 or प्राकृताकर्मणो यस्मात्तत्समानेषु कर्मसु । धर्मप्रवेशो येन स्यादनिदिशः स उच्यते ॥

6. Ch. VIII. 340.

7. लिप्सेत् “If he wishes or desires to take or obtain.”

8. See *Subodhini* Text P. 43 ll. 30-35; Tr. 110. ll. 7-27.

gold, silver or the like. Therefore ownership is deducible from (the commands of the Śâstra alone.<sup>1</sup>

(9) To this the answer is, (the right of) ownership is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do. But the consecrated fire and the like deducible from the *S'âstra*<sup>2</sup> do not give effect to actions relative to secular purposes.

[ It may again be argued ] Indeed even the consecrated fire, &c. has the capacity to boil food &c. [ The answer is ] not so; for it is not as<sup>3</sup> such that the consecrated fire effects the boiling of food &c. Then as what? [ *Answer* ] It is as fire (actually) perceptible to the senses (and) as such.

Here, however, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but by reference to ownership. Indeed, that which is not a person's property in a thing does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen even among the inhabitants of the (barbarous) countries of the frontier<sup>4</sup> who are unacquainted with the practice laid down in the Śâstra: since purchase, sale and other transactions are observed among them.

.(10) Moreover, such as are conversant with the science of reasoning, deem ownership<sup>5</sup> acquired by regulated means of acquisition

1. Here ends the objection or पृथक्पक्ष; and from the next sentence follows the answer.

2. The basis of the consecration of fire is *Śâstra* alone.

3. A fire has two characters, the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as an ordinary fire, as also in its special spiritual capacity.

4. प्रत्यन्त—lit. The border or frontier region. According to the *Amarakoṣa*.—“The country of the Mlechchhas”, “प्रत्यन्तो म्लेच्छदेशः स्यात्” (अमर. २।१।७).

5. Colebrooke translates thus, “deem regulated means of acquisition a matter of popular recognition.” The original has ‘नियतोपायकं स्वत्वम्’.



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- a matter of popular recognition. In the third clause of the *Lipsā*<sup>1</sup> *Sūtra* the venerable *Guru* has demonstrated as untenable an objection, which might be raised *vic.* “if restrictions relative to the acquisitions
- 5 “of goods, apply to religious ceremony, there could not be any “property, since proprietary right is not temporal”, by showing that “the efficacy of acceptance and other modes of acquisition in consti-  
tuting proprietary right is a matter of popular recognition”. Indeed, if
- 10 The objection. acquisition of wealth be only for (the performance of) religious ceremony, there would be no right of ownership, and consequently (the celebration of) a sacrifice itself would not be possible. (To this the answer would be) It is a blunder of any one who affirms that acquisition does not
- The answer. produce a proprietary interest, since this is a con-
- 15 tradiction in terms. Accordingly, the Author, premising the acceptance, by popular recognition, of the notion of the right of ownership, even in stating the demonstrated conclusion, proceeds to explain the purpose of the disquisition in this manner : “Therefore a breach of

1. The *Lipsā Sūtra*—( See Bālabhāṭṭi Sk. p.-125. Subodhini p. 44. Tr. pp. 112-114). This is a disquisition as regards the desire of acquisition ( *Lipsā* ) and is introduced in the Second *Sūtra* or *Adhikaraṇa* “यस्मिन्मीतिः पुरुषस्य तस्य लिप्सार्यलक्षणा” विभक्तत्वात्”, in the first *Pāda* of the fourth *Adhyāya* of the *Sūtras* of Jaimini.

In the *first Sūtra* the distinction between religious and personal purposes is examined ( कर्तव्यपुरुषार्थयोर्जिज्ञासा ). In the *second*, the inquiry is whether the acts of a man e. g. the milking of a cow &c. are relative to the person or to the act of religion. In the *third* the question examined is whether restrictions as to the means of acquisition noticed in the *Vedas* in reference to the four classes, must be taken as relative to the person or to the religious ceremony. And the demonstrated conclusion is that property when acquired is capable of being used for any number of purposes, but it can be used only by the person who acquires it; and since, therefore, the person acquiring it is the constant factor and the purposes for which it may be used may vary, the restrictions as to acquisition relate to the person.

Acquisition implies a relation between two objects, the owner and his own-like that of a mother and son; there can, therefore, be no acquisition without the thing to be acquired; and it is a contradiction in terms to say “acquisition does not produce proprietary right”—as it is to affirm “my mother is a barren woman.” See Bālabhāṭṭi Sk. p. 126 ll. 24-26. Also *Subodhini* Text. pp. 44 and 45 Tr. pp. 112-114.

“the restriction affects the person, not the religious ceremony”; and the meaning of this passage is thus expounded<sup>1</sup>: “If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and the celebration of the religious ceremony would not be perfect, if performed with wealth obtained by infringing the rules; and consequently, according to the objector, the fault would not affect the man if he deviated from the rule: but according to the demonstrated conclusion, since the restriction regarding acquisitions affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence only on the part of a man, because he has violated an obligatory rule.” It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

(11) From what has been said before, it should not be supposed that even what is obtained by robbery and like such means, would be property, for, proprietary right in such instances is not recognised by the world, and it (also) disagrees with established practice.

(12) Thus, since property, obtained by acceptance or any other (sufficient) means, is established to be temporal, the acceptance of alms and similar other modes (prescribed) for a *Brāhmana*, conquest and similar means for a *Kṣatriya*, husbandry and the like; for a *Vaiśya*, and service and the rest for a *Sūdra* are propounded as restrictions intended for spiritual purposes; while inheritance and like others are modes stated as common to all, (vide the text<sup>2</sup>): “An individual becomes owner by inheritance, purchase, partition, seizure<sup>3</sup> or finding.”

(13) Here, (*riktha*) “inheritance” is (used to indicate) unobstructible<sup>4</sup> heritage. “Purchase” is well known. “Partition” signifies

1. By the venerable *Guru i. e.* Prabhākara.

2. Of Gautama, Ch. X. 39 (See p. 982 l. 3 above.)

3. Acquisition by occupation cf. *Occupatio*.

4. अप्रतिबन्धो दायः

heritage subject to obstruction<sup>1</sup>. "Seizure" or occupation is the appropriation (such as) of water, grass, wood and the like, not previously appertaining to any other (person as owner). "Finding" is the discovery of a hidden<sup>2</sup> treasure or the like. If these reasons exist,  
 5 the person is (recognised as the) owner. If they take<sup>3</sup> place, he becomes proprietor. "In the case of a *Brāhmaṇa*, that which is obtained by "acceptance is additional"—(the meaning of this text<sup>4</sup> is) that, in the case of a *Brāhmaṇa* whatever is obtained by means of gift &c. is an additional (mode of acquisition) not common<sup>5</sup> (to all tribes); simi-  
 10 larly as to the text: "In the case of a *Kṣatriya*, what is obtained by victory<sup>6</sup>," "additional" is again understood. (The meaning is that) In the case of a *Kṣatriya*, whatever is obtained by conquest, amercement, or the like is (an additional mode) not common (to all the tribes). (So in the text<sup>4</sup>) "In the case of a *Vaiśya* and a *S'ūdra* what is  
 15 "earned" (as wages by labour)": Here also "additional" is again understood—(The meaning is that)—what is earned as wages by agriculture, keeping the cattle<sup>8</sup>, or the like, is in the case of a *Vaiśya* a (mode of acquisition) not common (to all tribes), and in the case of a *S'ūdra*, that which is earned in the form of wages by service of  
 20 the regenerate, and by similar means, is (a mode of acquisition) not common (to all tribes).

Thus, likewise, among the various causes of property which are peculiar to mankind, whatever has been stated, as peculiar in the case of certain mixed classes in the direct<sup>9</sup> or inverse<sup>10</sup> order of the tribes,  
 25 *e. g.* driving of horses in the case of the *Sūtas*, and like other modes, is indicated by the word "earned"; for all such acquisitions assume

1. सप्रतिबन्धो दायः ।

2. निह्यदिः ।

3. कृतेषु is the reading adopted here. There is another reading *vi.*: ज्ञानेषु  
 Tr: "if they are known &c."4. *i. e.* of Gantama cited above.5. असाधारण *i. e.* peculiar or special mode of acquisition specially mentioned.

6. विजितम्

7. निर्विष्टं

8. कृषिगोरक्षा

9. अनुलोमज—*i. e.* the issue of a mixed marriage when the father is of a class higher than that of the mother. See *Āchârādhyâya* Ver. 91-92 pp. 248, 250 above.10. प्रतिलोमज—is the issue of a mixed marriage where the mother is of a higher class and the father of a lower one. See *Āchârādhyâya* Ver. 93-94. p. 252. above.

the form of wages or hire : for according to the ( lexicon ) **Trikāṇḍee**<sup>1</sup> “ the word *nirveśa* is used to indicate wages or occupation.” All this should be understood as wealth acquired by modes not common ( to all tribes )

( 14 ) As for the precept<sup>2</sup>, (respecting the succession of) ‘the widow and the daughters’ &c., the declaration ( of the order of succession ), even in that text, is intended to prevent any mistake, although the proprietary right be a matter familiar to the world, where many persons might ( but for this precept ) be supposed entitled to share the heritage by reason of their affinity to the ( deceased ) owner. The whole is therefore unexceptionable. 5 10

( 15 ) As for the remark, that if property were temporal, it could not be said “ my property has been taken away by him ”, that also is not accurate ; for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right. 15

( 16 ) The purpose of the preceding disquisition is this : A text<sup>3</sup> says : “ When *Brāhmaṇas* acquire wealth by a blameable act, “ they are purged of the guilt by the abandonment of such wealth, by “ prayer, and by rigid austerity.” Now, if property be deducible only from *S’āstra*, that which has been obtained by blameable means *e. g.* by accepting presents from an improper person, or by barter, or similar other means would not be property at all, and consequently would not be property partible among sons. But if the proprietary interest be a worldly matter then even what is obtained by accepting presents from an improper person &c. is property, and may be divided among heirs ; and the atonement above referred to in the text “ they are “ purged of the guilt by its abandonment &c.” regards the acquirer only ; but of the sons, however, their proprietary interest arises by their right of inheritance and 20 25 30

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1. Amara. III. 3-214.

2. Yājñ. II. 135, *infra*.

3. Of Manu Ch. XI. 194.

therefore no blame attaches to them, since **Manu**<sup>1</sup> says : “ There are “ seven lawful modes of acquiring property, (*viz.*) inheritance, finding, “ or friendly donation, purchase, conquest, lending at interest, the “ performance of work, and the acceptance of gifts from virtuous men.”

- 5, (17) Next, it is doubted whether the right of property arises from partition or the division of a proprietary interest which already was existing ? (18) Of these (positions), that
- Another position. of property arising from partition is right ; since a man to whom a son is born, is enjoined to
- 10 maintain a holy fire : for, if property were vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth. (19) Likewise, the prohibition of a division of that, which
- 15 is obtained from the liberality<sup>2</sup> of the father, previous to separation, would not be pertinent since no partition of it can be supposed, for it has been given by consent of all parties. As says **Nārada**<sup>3</sup>
- 20 “ The two kinds of property, *viz.*, gain of valour and the wealth of a “ wife, and also that which is acquired by science — are three kinds of “ property not subject to partition, and so is a favour conferred by “ the father (exempt from partition). ” (20) So the text<sup>4</sup> concern-
- ing an affectionate gift *viz.* “ what has been given by a husband, “ when pleased,<sup>5</sup> to his wife, she may consume as she pleases, even “ when he is dead, or may give it away excepting immovable
- 25 “ property,” would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words “ excepting immovable property ” with the terms “ what has been given ” (in this text) ; for that would be a forced construction by connection of disjointed

1. Ch. X. 115. See *Ponnappa vs. Pappuwayyanganar*. 4 Mad. at page 24 — where the court enters into an elaborate discussion of this and other passages of the *Mitākṣharâ*, for determining the relative positions of a father and a son under the *Mitākṣharâ*.

2. प्रसाद *i. e.* favour, pleasure.

3. Chapter : XIII-6.

4. Of **Vishṇu**.

5. Cf. *Mayākha*. IV. 10-9 where it is ascribed to **Nārada**.

See—*Damodar vs Parmanandas* 7 Bom. 165. *Jagmohandas vs Mangaldas* 10 Bom. 546. *Surajmuni vs Rabinath*. 25 All. 353.

terms. (21) As for the text "The father is master of the gems, "pearls, and corals and of all (other movable property); but neither "the father nor (even) the grand-father is so of the whole<sup>1</sup> immovable "estate" and also (the text<sup>2</sup>): "By favour of the father, clothes and "ornaments are used, but immovable property may not be consumed, 5  
"even with the father's indulgence"—which passages forbid a gift of immovable property through favour: they both relate to immovables which have descended from the paternal grand-father. And although after the grand-father is dead his effects become the common property of the father and sons, it appears even from this text, that 10  
the gems, pearls, and other movables, belong exclusively to the father, while the immovable estate remains common (22) Therefore property is not by birth, but by demise of the owner or by partition. Accordingly, since the demise of the owner is a cause of 15  
property, there is no room for supposing that a stranger could not be prevented from taking the effects because the property was vacant<sup>3</sup> after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease, and does not require partition.

(23) To this the answer is: It has been shown that property is 20  
a matter of popular recognition, and the right of The Answer. sons and the rest, by birth, is most familiar to the world, and so it cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods 25  
vacant or unowned. For the text of **Gautama**, expresses "Let owner-ship of wealth be taken by birth, as the venerable teachers direct." (24) Moreover the text above cited viz.<sup>4</sup> "(the father is the master) of "gems, pearls, corals &c." is pertinent to the supposition of a proprietary

1. सर्वस्य—The meaning of the text is that, not the father, not even the grand-father is the master of any of the immovable property &c.

2. The author of this text is not known.

See *Shri Sitaram Pandit vs Shri Harihar Pandit* 35 Bom. 169 at p. 181.

3. द्रव्यस्वत्वस्य ग्रहीणत्वात्—There being no proprietary right over the property &c. on account of the non-existence of the owner &c. (See *Bālabhāṭṭi Sk.* p. 131).

4. viz. of *Nārada* ll. 1-4. above.

right vested by birth. Nor is it right to affirm that it relates to immovables which have descended from the paternal grand-father<sup>1</sup>: since the text expresses “neither the father, nor even the grandfather<sup>1</sup>.” This rule<sup>2</sup>, that the grandfather’s own acquisition should not be given  
 5 away while a son or a grandson is living, indicates a proprietary interest by birth. According to *the other opinion*, the precious stones, pearls, clothes, ornaments, and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so according to our opinion also, the father has<sup>3</sup> power, under  
 10 the same text, to give away such effects, though acquired by his father. Thus there is no<sup>4</sup> difference.

(25) As for the text of *Viṣṇu*<sup>5</sup> *viz.* “(That which has been “given”) by the husband when pleased &c.” which mentions a gift  
 15 acquired by the father himself and given with the consent of his sons and the rest: for, by the text<sup>6</sup> above cited *viz.* “(the father is the “master of) gems, pearls &c.” the fitness of things, only those other than immovables, for an affectionate<sup>7</sup> gift was determined with certainty. (26) As for the alleged disqualification<sup>8</sup> for religious  
 20 duties which are prescribed by the *Veda* and which require for their accomplishment the use of wealth, sufficient for such purposes is inferred from the cogency of the text itself which enjoins their performance and which is in the nature of a command.

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1. The word ancestral can only apply to the property of the paternal grand-father and his ancestors, and not to the self-acquisition of the father. See *Baijnath vs Maharaj* 8 Luck. 28; see also *Muhammad Husain vs Kisva Nandan* 39 Bom. L. R. 979 (P. C.).

2. *viz.* That which is stated in the text of Nārada cited above.

3. See no. 1, p. 994.

4. *i. e.* Difference of opinion.

5. Cited above at p. 988, ll. 22-24.

6. *i. e.* of Nārada & *Viṣṇu*.

7. Thus a father cannot give even a small portion of ancestral property to his daughter, on the ground that she looked after him in his old age. *Jinnappa vs. Chimmava* 59 Bom. 460; nor can he make a will, *Parvatibai vs Bhagvant* 39 Bom. 593.

8. Both Bālabhāṭṭi & Subodhini explain this by saying that the power to perform these is given by special texts which enjoin their performance.



(27) Therefore<sup>1</sup> (it is settled that) ownership in the father's or grand-father's<sup>2</sup> estate is by birth. Still, it (also) stands (as good law) that the father has independent power in the disposal of effects others than immovables for indispensable acts of duty, and for purposes prescribed by the texts of law, as gifts through affection, support of the family, relief from distress and so forth: but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other

1. This text regarding the birth-right; in the ancestral property and the father's power of disposal over the same has been noticed in various cases.

In *Babu vs Timma* 7 Mad. 357 at p. 362. Turner C. J. observes as follows in regard to this portion of the *Mitākṣharâ*: "The effect of the several passages taken together is that, while the ownership of the son is recognized in all property, whether the self-acquired property of his father or ancestral, the father has power to dispose at his pleasure of his self-acquired movables, and with a consent which his son must give, of his self-acquired immovables;—he has the power to dispose of ancestral movables for purposes inculcated by sacred texts, and of all property for indispensable acts of duty; but the son may interdict him, if he applies ancestral wealth, whether movable or immovable, to purposes other than those sanctioned". See also *Jinnappa vs Chimmara* 59 Bom. 459=37 Bom. L. R. 483-487. and 50 Cal. 266-271. 45 All. 90 (will by the father).

The following may be noted as some of these.

*Rao Balvant Singh vs Rani Kishori* 25 I. A. 541 67 at p. 68. *Gandhi Maganlal vs Bai Jadhav* 24 Bom. 214. *Bachoo vs Kushaldas* 29 Bom. 61.

*Ponnappa Pillai vs Pappuwayyanganar* 4 Mad. at pp 8, 16, 42 &c.

*Gangula vs Ancha Bapulu* 4 Mad. at p. 89.

*Sivasankura Mudali vs Parvati Anni* 4 Mad. at p. 103.

*Narasimha vs Venkataadri* 8 Mad. 293.

*Nana Taukar vs Ramchandra Taukar* 32 Mad. at p. 381.

(This case discusses the several portions of the *Mitākṣharâ* bearing on the father's right over ancestral property generally.)

*Kali Parshad vs Ram Charan* 1 All. 160; *Sital vs Madho* 1 All. 396.

*Jasoda Koer vs Sheo Pershad* 17 Cal. at p. 36.

*Chandradeo Singh vs Mata Persad* 31 All. 176, 180, 184, 187, 211.

*Nand Ram vs Mangalsen* 31 All. 359.

*Mohanund vs Nafur Mondul* 26 Cal. 824.

2. Colebrooke translates as 'ancestral.' The word in the original text is पैतामहे *Paitāmahe* i. e. belonging to the grandfather. Mr. Colebrooke's translation has been commented on in *Jamna Prasad vs Ram Partab* 29 All. at p. 669 referring to the remarks of Babu J. C. Ghose in his *Hindu Law* page. 375 (2nd Ed.)



predecessor; *vide* the text<sup>1</sup> “Though immovables or bipeds have been  
“acquired by a man himself, a gift or sale of them should not be made  
“without convening all the sons. They, who are born, as also they who  
“are yet unbegotten, and they who are still in the womb, require the  
5 “means of support; no gift or sale should, therefore, be made.”

\*PAGE 76.

(28) An exception to it follows: “Even a single individual  
An exception stated. “may conclude a donation, mortgage, or sale, of

10 Explained. “immovable<sup>3</sup> property, during a season of distress,  
“for the sake of family, and especially for pious purposes.” (29) The  
meaning of that text is this: while the sons and  
grandsons are minors and incapable of giving  
their consent<sup>4</sup> or doing similar acts, or while the brothers are so and  
continue unseparated, even one person, who is capable, may  
conclude a gift, hypothecation, or sale, of immovable property,  
15 if a calamity affecting the whole property require it, or for sup-  
porting the family, or for performing indispensable<sup>5</sup> duties,

1. “Of *Vyāsa* as cited in other compilations”—Colebrooke.

2. *Brhaspati* as cited in the *Ratnākara* &c.—Colebrooke.

3. See *Bhau vs Raghunath* 30 Bom. at p. 239; also see, *Govind vs Deekappa* 40 Bom. L.R. 539 at p. 543.

4. and thus render the expenditure a valid binding charge upon their shares.

5. “Indispensable duties.” The expression in Sanskrit अवश्यं कर्तव्येषु पितृश्राद्धादिषु—  
(*Āvāśyam Kartavyeṣhu pitṛ-śrāddhādīṣhu*) Tr. “For acts which must be performed  
such as obsequies of the deceased ancestors and the like” (see 34 Mad. at p. 434)

This expression has been subjected to judicial criticism—see *Govindarazulu vs Devarabholla* 27 Mad. at p. 209. As regards the term *Ādi*—‘and the like’—at the end of the above expression, Muttuswami Ayyar J. observes as follows in *Ponnappa vs Pappuwayyengar* 4 Mad. at p. 17. “The phrase *Ādi* both according to Hindu law and the rule of construction, refers to annual *Śrāddhas*, the ceremony of upanayana in the case of minors in the three higher classes, and of marriage in the case of girls &c.—and in short to such ceremonies as, if unperformed, would entail a forfeiture of caste or status etc.”—and it was held in 27 Mad. 209 that that expression could not be extended to the marriage of males. This interpretation was dissented from later on in *M. Kameswara Sastri vs Veerachariu*, 34 Mad. where at p. 434 it is observed, “the word *Ādi*—means “beginning with” and merely indicates that the father’s ceremony which is named is one out of a group of ceremonies.” The expression simply means “acts, such as the *Śrāddha* and the like others which have necessarily to be done.” See also 32 Bom. 81.

such as obsequies of the ancestors<sup>1</sup> (manes). (30) As for the text<sup>2</sup>—  
“Kinsmen, whether unseparated or separated, are equal in respect  
“of (rights in) immovables; for one (alone) has not power over the  
“whole, to make a gift, sale or mortgage”—it must be interpreted thus:  
among unseparated kinsmen, the consent of all is indispensably 5  
requisite, because, since the estate is held in common, no one is fully  
empowered to make an alienation; but among separated kinsmen,  
the consent of all tends to the facility of the transaction, by obviat-  
ing any future doubt, as to their separation or union; it is not  
required on account of any want of sufficient power in the single 10  
owner, and hence the transaction is valid even without the consent  
of separated kinsmen. (31) Again as for the text,<sup>3</sup>—“Land passes  
“by six (formalities), by consent of townsmen, of kinsmen, of neigh-  
“bours, and of heirs, and by gift of gold and water.”—consent of  
townsmen is required for the publicity of the transaction, since it is 15  
provided<sup>4</sup> that “acceptance of a gift especially of the immovable prop-  
erty, should be public”, but not that the contract remains incomplete  
without the consent of the townsmen: the consent of neighbours  
serves to obviate any dispute concerning the boundary; the use of  
the consent of kinsmen and of heirs has already been explained. 20  
(32) *By gift of gold and water*—since the sale of immovable prop-  
erty is forbidden by the text: “In regard to the immovable estate,  
“sale is not allowed (but) a hypothecation may be made with the con-  
“sent (of persons interested),” and since also donation is praised in the  
text: “Both he who accepts land as a gift as also he who gives it, are 25  
“performers of a holy deed and shall surely go to heaven,” even when  
a sale is to be made, it should be conducted, for the transfer of  
immovable property, in the form of a gift, delivering with it gold  
and water (to ratify the donation). This is the meaning.

1. Colebrooke translates—“obsequies of the father”—but the word *pitr* when used in connection with *Śrāddha* indicates other ancestors also who are dead and whose *Śrāddha* is to be performed.

2. Of Brhaspati XXV—13. See *Ponnappa vs Poppuwayangar* 4 Mad. 1 at pages 9, 10, 54 where this text has been referred to and discussed.

3. The author of this passage is not known.

4. Yājñavalkya II. 176. See 11 I. A. 218 at p. 230.

( 33 ) Although the right of property is by birth alone in the estate of the father or the grandfather, we shall mention ( later on ) a special rule in the text ( II. 121 ) “ Land which was acquired by “ the grandfather &c.”

## [ Colebrooke Sect. II. ]

5 ( 1 ) Now<sup>1</sup> with a view to expound, at what time, by whom, and how, partition may be made, the Author says

## Yājñavalkya, Verse 114.

If the father makes a partition, let him separate his sons at his pleasure, and either separate the eldest with the best share, or ( if he  
10 choose ) all may be ( made ) equal sharers.

Mitâkṣharâ:—( 2 ) Vibhâgam chet pitâ kuryât, if ( ever ) the father wishes to make a partition, then ichchhayâ vibhajet, he may at his pleasure separate, sūtân, his sons from himself; whether one, two, or more sons.

15 ( 3 ) The will being unrestrained and no rule being suggested, the Author adds, by way of restriction, **jyeshtham**  
Special rule for the share of the eldest. **wâ śreṣṭhabhâgena**, and either ( separate ) the eldest with the best share. From this it is understood<sup>2</sup>

20 that he may separate the eldest with the best share, the middle-most with a middle share, and the youngest with the smallest<sup>3</sup> share.

( 4 ) This distribution of the best and other portions is propounded by Manu<sup>4</sup>: “ The additional share ( deducted ) for the eldest shall be “ one-twentieth ( of the heritage ) and which is the best of all the “ chattels; for the middle-most, half of that; for the youngest, a  
25 “ quarter of it.”

1. तद्दर्शयन्—Tr. while pointing out ( as to, at what time &c.—the Author says &c.). This portion has been referred to in *Kali Parshad* vs. *Ramcharan* 1. All. 160 ( F. B. ) Where it has been held that “ The son has under the *Mitâkṣharâ* right to demand partition and part of his share in the ancestral immovable property during the life-time of the father and against his will.”

2. अनुवर्तते i. e. it follows.

3. i. e. as given in the text of *Manu* here immediately following.

4. Ch. IX. 112.

(5) The term *wâ*, *either*, is relative to the subsequent<sup>1</sup> alternative *viz.*, *sarve wâ syuḥ samâṁśinah*, or 'all may be equal sharers, i.e. or all, namely, the eldest and the rest, should be made partakers of equal portions.

(6) This unequal distribution, moreover, is allowed in reference to property acquired by himself. But, if the wealth descended to him from a line of<sup>2</sup> ancestors, an unequal partition at his pleasure is not proper, as equality of ownership (over such property) will<sup>3</sup> be declared (further on).

(7) Under the text<sup>4</sup> "If the father makes a partition &c.", when the father desires separation, that is one period for partition. Another period, also, is when, even when the father is living, but is indifferent to wealth and disinclined<sup>5</sup> to pleasure, and when the mother is incapable<sup>6</sup> of bearing issue — at such a time a partition is admissible merely at the option of the sons<sup>7</sup>, even against the wish of the father, as is shown by Nârada,

\* PAGE 77. who, premising partition subsequent to the demise of both parents by the text<sup>8</sup>: "Therefore, let the sons divide the wealth equally, when the father is dead", adds<sup>9</sup>, "Or when the menstruation of the mother has ceased, and the sisters are married, or when the father's sexual desire is extinguished, and he has become indifferent to worldly interests." Here the words "Let the sons divide the wealth equally" are understood. Gautama<sup>10</sup> likewise, having said "After the demise of the father, let the sons divide his estate," states a second period, "or when the mother is past

1. वक्ष्यमाण—Hereafter to be stated.

2. Colebrooke translates "from his father", but the expression is पितृक्रमयाते (pitṛkramâyâte) Tr. "descended from an unbroken line of male ancestors."

3. Yājñavalkya II, 121.

4. Yājñavalkya II, 114.

5. निवृत्तरमणे—is satiated or fed up with pleasures.

6. Lit. it means—and when the mother has ceased to menstruate.

7. The Sanskrit expression is पुत्रेच्छयैव, at the mere option of the sons. The word पुत्र is used in a collective as also in a distributive sense. It may therefore be at the option of one son or of more.

8. Ch. XIII. 2.

9. Ch. XIII. 3.

10. Ch. XXVIII. 12.

“child-bearing,” and a third period has been indicated viz., “while the father lives, if he desires separation.” So, even while the mother is capable<sup>1</sup> of bearing more issue, though the father be unwilling, if he be addicted<sup>2</sup> to vice or afflicted with a lasting disease a partition is admissible by the choice of the sons. As says *Saṅkha* : “(Even) when the father does not wish, partition of inheritance takes place if he be old, disturbed in intellect, or diseased.” (114).

### Śûlapâṇi

#### Now the Distribution.

#### Yājñavalkya, Verse 114

The father, if he makes a distribution of his self-acquired property, then he may make the sons separate according to his wish, and not the wish of the son.

As says *Viṣṇu*<sup>3</sup> : “If the father separates the sons, he may make the sons separate according to his wish in regard to property acquired by himself. In regard to the grand-father’s property, however, the ownership of the father and the son is equal; partition cannot be according as he may wish.” Here ownership is the cause.

So *Devala* : “When the father is dead, the sons may divide the father’s property. There will be no ownership of these when the father is living and faultless.” *Faultless*, i. e. not degraded.

At some places *Nârada*<sup>4</sup> mentions a division by the wish of the son even in regard to the father’s acquisitions, thus : “When the mother has ceased to menstruate, and the sisters have been married, when the father’s

1. स्रजस्कायाम्—(Lit.) has (yet) the menstruation.

2. The translation of Mr. Colebrooke is retained here—but the expression in Sanskrit viz., अधर्मवर्तिनि “when his conduct is not in conformity with (the rules of) *Dharma*”—has a wider meaning and force. Being addicted to vice is only one phase of “the conduct not being in conformity with *Dharma*”, and the son would thus have a wider range of circumstances under which he can ask of a partition.

Moreover, in explaining the text of *Saṅkha* in the next line *Bālabhaṭṭa* gives अधर्मवर्तिनि as an equivalent of विपरीतचेतसि—which Colebrooke has translated as “disturbed in intellect.” According to him the two expressions bear an identical meaning and would mean—“When the father has become irreligious.”

3. Ch. XVII, 1-2.

4. Ch. XIII. 3

“sexual desire is extinguished, and he has become past ( all ) desires.”  
‘Sexual desire is extinguished,’ *i. e.*, when his capacity for sexual enjoyment is gone. ‘Past ( all ) desires’ *i. e.*, from the householder’s position to that of the hermit.

*Jyeshtham wā*, ‘Or the eldest &c.’ *i. e.*, he should separate them with the largest share for the eldest. Or he may so make ( the partition ) that all may become equal sharers. So Nārada<sup>1</sup>: “By the father himself, those “who have been separated into equal or less shares of the property, for them “that itself is the law; indeed, the father is the master of all.” ( 114 ).

( 8 ) Partition at the pleasure of the father has been stated to 10  
of be of two sorts *viz.*, equal and unequal. In this connection, in the case of an equal partition the Author adds a particular rule

### Yājñavalkya, Verse 115.

If he make the allotments equal, his wives<sup>2</sup> ( such of them ) to whom 15  
no Strīdhana<sup>3</sup> had been given by the husband or the father-in-law, must be made partakers of equal portions.

Mitākṣharā :—( 9 ) When, by his own choice, the father makes all his sons partakers of equal portions, then, the wives also should be made participants of shares equal to those of sons. *Yāsām*, *such* of the wives, *bhartrā śwaśureṇa wā strīdhanam na dattam*, *to whom no strīdhana had been given by the husband or by the father-in-law*. But if *strīdhana* 20  
had been given ( to a woman ) the Author directs further on<sup>4</sup> ( verse 148 ) half a share to be allotted to her ( in the text ) : “or if any had “been given, let him assign a half.” ( 10 ) If, however, he make the allotments by allotting the best share, &c., to the eldest &c., then the 25  
wives do not get the best or such other portions, but receive equal shares of the aggregate from which the special shares have been

1. Ch. XIII. 15.

2. A wife gets this share only after the actual distribution. *Pratapmull vs Dhanabati* 63 Cal. 691, ( P. C. ). *Raoji vs Anant* 42 Bom. 538.

3. Colebrooke translates the word *Strīdhana* as *separate property*—Having regard to the technical character of this expression, and having regard to the fact that the word is more properly understood as *Strīdhana* than by any of its English equivalents, the original word has been retained in the translation.

4. *Shoo Naran vs Janki Prasad*, 34 All. 508. See *Ponnappa vs Pappuwayyanganar* 4 Mad. 1/20-22 ( F. B. ); *Sumrun Thakoor vs Chunder Muni Thakur* 8 cal. 17.

subtracted, as also their special additional share as laid down by Âpastamba<sup>1</sup> "And the furniture in the house. The ornaments, are the "wife's (property)."

### Sûlapâṇi

#### Yājñavalkya, Verse 115.

5

Yad, 'If &c.' If the father, by his wish makes them (the sons) partakers of equal shares, then the wives also who are without sons should be made partakers of equal shares; to whom *Stridhana* has not been given by the husband or any other, by reason of the text: "Or if any had been  
10 "given, a half has been declared." If however *Stridhana* had been given, half should be given.

Himself, however, if there be (only) one son, he should take two shares. If he has more than one sons, less than two shares. As say *Śaṅkha* and *Likhita*: "He, if he has one son, should make two shares for himself."

15

Similarly also: "Two shares should he take for himself, when the father "makes a partition." This text<sup>2</sup> of *Nârada* is even to this effect also (115).

#### 1. II' 14-8-9.

Mr. Colebrooke translates "The furniture in the house and her ornaments are the wife's (property)—" this is in accordance with the published 'extracts' of the text of Âpastamba. A reference to the text of Âpastamba itself, however points to a different state of things. This text occurs in the 14th *Khaṇḍa* of the 2nd Book of Âpastamba's *Dharmasûtra*. This *Khaṇḍa* treats of the *Dâyavibhâga* or "Distribution of heritage". From § 1 to 5 the general line of heirs is mentioned, § 5 mentioning the king as taking by escheat. Then from § 6 begin special rules of inheritance, and § 7 and § 8 give the special right of the eldest son to certain items of property, § 9 mentions the wife's claim to special property and § 10 modifies it to some extent. The text quoted in the *Mitākṣharâ* is part of § 8 and 9. Paras 7, 8, 9 and 10 run thus:

"In some countries, gold, black cattle, black produce of the earth is the share of the eldest (7). The chariot, and the furniture in the house according to some § (8). The share of the wife consists of her ornaments, and the wealth of the *jñâti*. That, however, is opposed to, *Śâstra* (9)."

It will thus be seen that "the furniture in the house" in the passage from Âpastamba forms part of § 8 which (together with § 7) exclusively mentions properties which go to the eldest son, while it is in para § 9 alone that a reference to the ornaments of the wife is made. The translation given above and the punctuation are in accordance with this reading of the text.

#### 2. Ch. XIII. 12.



(11) To the two alternatives before stated, *viz.*, “and either “separate the eldest with the best share or (if he choose) all may be “(made) equal sharers.” (II. 114. p. 994 l. 9 above), the Author propounds an exception.

Yājñavalkya, Verse 116 (1).

5

Of one who is able and who is not desirous of having any share, the separation may be effected by giving (him) a trifle.

Mitākṣharâ :—(12) To one who is himself competent to earn wealth, and *anihamānasya*, *who is not desirous of having any share*, from his father's wealth, *i. e.*, who does not wish to have any share, anything, whatsoever, *i. e.*, *kiñchit*, *a trifle*, an article of no value may be given and *prthak kriyâ*, *separation effected*, *i. e.*, the division may be (thus) completed by the father; so that the children, or other heirs of that son, may have no future claim of inheritance. 10

(13) By the text “or the eldest with the greatest share” the distribution of greater and less shares has been shown. To forbid, in such a case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions (of the special shares) such as are dictated by *S'âstra*, the Author adds : 15

Yājñavalkya, Verse 116 (2).

20

A partition made by the father among sons separated with greater or less shares, if (it be) according to *Dharma*, is pronounced valid.

Mitākṣharâ :—(14) Of the sons *vibhaktânâm*, *separated*, *nyûnâdhika*, with a *greater or less share*, if such an unequal partition be *dharmyah*, *made according to Dharma*, *i. e.* as dictated by *S'âstra*, then that division, *pitṛkrtaḥ*, *made by the father*, is (regarded as) completely made, and cannot be afterwards set aside; this is pronounced, *smṛtaḥ*, by *Manu*<sup>1</sup> and the rest. If, however (it be) otherwise, it may be set aside even though made by the father. As says *Nârada*<sup>2</sup>: “A father, who is afflicted “with disease, or influenced by wrath, or whose mind is engrossed by “sensual passion, or who acts contrary to what the *S'âstra* dictates, “has no power in the distribution of the estate.” 25 30



## Vîramitrodaya

Now the Author begins the Chapter on *Dāyabhāga*. Its definition has been given by Nārada<sup>1</sup> : "Where a partition of the paternal estate is instituted by the sons, it is called by the learned—partition of the  
5 "*Dāya*—a title at law".

By the use of the two terms *paitrya* 'paternal', *tanayaḥ* 'sons', it is intended to show that it is indicative of only those relations by propinquity who are connected through his own seed. *Vibhāgaḥ*, 'partition',  
10 *i. e.*, where property is held in common ownership, and when by particular arrangement and the like, that is removed and a restricted ownership is super-imposed. *Dāya*, means 'wealth,' *i. e.*, wealth which was acquired by reason of relationship to the owner. A share of that is *vibhāga*, 'partition'.

Here, the Author first states the partition when the father is  
15 living.

## Yājñavalkya, Verses 114, 115, 116

*Pitā*, 'the father', *chet*, 'if', *vibhāgam* 'a partition', *i. e.*, of property of his personal ownership as being either his self-acquisition, or property (lost to the family and) recovered by him; *kuryāt*, 'makes,' then  
20 *ichchhaya*, 'at his pleasure,' *i. e.*, according as he may desire, by giving property more or less even, *sutān*, 'the sons,' he 'may separate,' *vibhājet*. That says Viṣṇu<sup>2</sup> : "If a father makes a partition with his sons, he may "dispose of his self-acquired property as he likes." Manu<sup>3</sup> also : "When  
25 "the father acquires ancestral property which was unrecoverable, the "property he need not divide with his sons if he does not (so) desire ; it "is his self-acquired." The father may leave such recovered property (which was lost), but in regard to other property, when the father makes a partition, *sarve* 'all,' the sons, should be the participators of equal shares.

30 In regard to the eldest, 'with the eldest son's share' *i. e.*, together with a tenth or a twentieth part, he should divide.

Of the sons, moreover, the shares should be made equal to his.

On the other hand, however, of the father who makes the partition, of the wives for whom *bhartrā wā śvaśureṇa wā* 'either by (their) husband or by (their) father-in-law,' *na stridhanam dattam*, 'no *stridhana* had  
35 been given,' those wives, and the wives who have *stridhana*, should be made participators of equal property, or should be given shares from the

divided property. If, however, in pursuance of the text of Nârada<sup>1</sup> viz.,  
“Two shares should he take for himself, when the father makes a  
“partition,” or in pursuance of the text of Hârîta viz. : “Or after  
“dividing a small portion, he should take the largest and remain”, he  
(the father) takes a double or a very large share for himself, then from  
his own share itself, ‘they should be made partakers of equal portions.’

5

*Śaktasya*, ‘of one who is competent’ i.e., who is himself competent  
to make acquisitions, and from the ancestral property, *anīhamānasya*,  
‘who is not desirous of having (any share),’ i.e., who does not wish,  
to such a son, some small share, such as a *prastha* of rice or the like, for  
meeting the objections by his son, ‘should be given by the father, and  
by the brothers also; *prīthak kṛiyā*, ‘the separation should be effected’,  
i.e., the partition should be made.

10

Of those who have been separated with the assignment of more or  
less i.e., unequal property, even such, a partition as made by the father is  
pronounced to be ‘legal’, *dharmyāḥ*. Therefore one should not raise object-  
ions at a later time. As for the father, by reason of the same being  
disliked by the people, such a partition is certainly illegal. This is the  
meaning. *Vide Âpastamba*<sup>2</sup> : “After having gladdened the eldest son  
“by some (choice portion of his) wealth, during his life-time, he should  
“divide his wealth equally amongst his sons,” “by some property” i.e., by  
a choice portion of his property. By the particular mention of *jīvat*,  
‘during his life-time,’ he intends that after he is dead, the wife does not  
get a share. ( 114–116 ).

15

20

### Śûlapâṇi

25

#### Yājñavalkya, Verse 116

*Śaktasya*, “Able &c.” One who by reason of his learning &c., is com-  
petent to earn and has no desire for the common property, such a one  
should be made separate by the brothers after giving him a trifle, such as  
a rice-field, or the like, for obviating any disagreement by his sons in  
aftertime.

30

Of those, however, who have been made separate with more or less,  
by reason of its having been made by the father, that itself is (according  
to) law. In such a case no disagreement should be permitted in after-  
time. ( 116 ).

35

## [ Colebrooke Sect. III. ]

\*PAGE 78.

[ Partition after the father's decease. ]

(1) The Author next propounds another period of partition,  
5 other persons as making it, and a rule respecting the mode :

## Yājñavalkya, Verse 117 (1).

The sons should divide, after the parents, both the assets and the debts,  
of them equally.

Mitākṣharâ :—(2) Pitroh, of the parents *i. e.*, of the mother and the  
10 father, ūrdhwam, after<sup>1</sup>, *i. e.*, after the death. Thus the period (for  
partition) is shown. By (the expression the) sutâḥ, sons, the persons  
who make the distribution are indicated. By (the expression) samam,  
equally, the rule as to the mode (of partition) is indicated, *i. e.*, in  
equal shares only, they should divide the assets and the debts.

15 (3) But Manu, having premised<sup>2</sup> “after the death of the father  
and of the mother” and having declared,<sup>3</sup> “The  
An Objection. “eldest alone may take the whole paternal estate;  
“the others should live under him just as (they lived) under their father”;  
has said<sup>4</sup>: “The additional share (deducted) for the eldest is the  
20 “twentieth part (of the heritage), as also that which is the best of all  
“chattels; for the middlemost, half of that, but one-fourth for the  
“youngest”. Of the entire property the twentieth portion, as also that  
which is the best of all the chattels, that must be given (by way of  
deduction) to the eldest; half of that, a fortieth part, and a middl-  
25 ing chattel, should be allotted to the middlemost, and a quarter of  
it—the eightieth part, and an article of low<sup>5</sup> quality should be given  
to the youngest, and thus Manu has exhibited a distribution with  
deductions among brethren separating after the death of the mother  
and the father.

30 Moreover,<sup>6</sup> by the text<sup>7</sup>. “But if there be no deduction, the allot-  
“ment of shares shall be in this manner : Let the eldest son take one

1. See *Jairam vs. Nathu* 31 Bom. 54 = 8 Bom. L. R. 634.

2. Ch. IX. 104.

3. Ch. IX. 105.

4. Ch. IX. 112.

5. Colebrooke Tr. “worst chattel”.

6. From here begins the last part of the objection against an “equal portion.”

7. Ch. IX. 116-117.

“share in excess, and the next born one half share more, and the younger  
“ones one share each; thus is the law settled”; thus by allotting to  
the eldest two shares, to the ( brother ) next born a share and a half,  
and to those born next after, one share each, even when without  
deductions, he has directed an unequal partition among brethren separ- 5  
ating after the demise of the parents.

And when a division is made during the father's life-time the  
Author ( *i.e.*, Yājñavalkya ) himself has exhibited an unequal distri-  
bution ( by the text ) : “ Or the eldest with the best share ” &c. ( II.  
114 p. 182 l. 21 above. ) 10

Hence an unequal partition is admissible even at all times. How  
then is a restriction introduced requiring that “ sons should divide only  
“in equal shares” ?

( 4 ) The question ( put ) here is thus answered : True, this unequal  
The Answer. partition is found in the *S'âstra*, still however, as 15  
it is abhorred by the world, it must not be practi-  
sed, since that is forbidden by the text<sup>1</sup> : “ One must not practise that  
“which procures not the celestial bliss and is abhorred by the people,  
“even though it be allowed by law”. As for example, notwithstanding  
the direction in the text<sup>2</sup> : “Let him offer a big bull or a big goat to 20  
“a venerable priest,” still as that is abhorred by the people it is not  
practised. Also as “Slay a barren cow as a victim consecrated to  
“Mitra and Varuṇa” notwithstanding this direction as to the slaughter  
of a cow in the text, still as it is abhorred by the people, that is not  
practised. 25

( 5 ) It has also been said<sup>3</sup> : “ As the law relating to appointment  
“and also the rule regarding the slaughtering of a cow as a victim is not  
“now in use, so also is the partition with deductions dot current now.”

( 6 ) Âpastamba, also, having delivered his opinion ( in the text<sup>4</sup> ).  
“ He ( *i.e.*, the father ) should, during his life-time, divide his wealth 30

1. Yājñavalkya I. 156 p. 365 ll. 2-4 above.

2. Yājñavalkya I. 109 p. 302 ll. 30-32 above.

3. In a text of Bhaṭṭa—( see Bālabhāṭṭi p. 139 ) The meaning is that there  
are two *Vidhis*—one ordained by the *Veda* and the other ordained elsewhere than  
*Veda*. See Bālabhāṭṭi and Subodhini, p. 114.

4. II. 6-14-1.

“equally amongst his sons,” and by the text<sup>1</sup> : “Some hold that the  
 “eldest is the heir” having premised, as the opinion of some, the  
 succession of the eldest to the entire estate, and having exhibited as  
 the opinion of others the distribution by (the method of) deductions  
 5 having regard to (the usage of) particular places *viz.*<sup>2</sup> : “(In particular  
 “countries), gold, black kine, and the black produce of the earth,  
 “belong to the eldest. The chariot and the furniture in the house are  
 “the father’s, and according to some, ornaments, as also property  
 “(received by her) from kinsmen belong to the wife,” has refuted it  
 10 as being forbidden by *S’âstra*; and has himself pointed out the prohi-  
 bition in the *S’âstra* thus<sup>3</sup> : “It is recorded in Scripture, without dis-  
 “tinction, that *Manu* distributed his heritage among his sons<sup>4</sup>”.

(7) Therefore, unequal partition, though noticed in the *S’âstra*,  
 still as it is disapproved by the world and is contrary to Scriptures it  
 15 should not be practised. And for this reason the restrictive rule is laid  
 down, *viz.*, “(the brethren) should divide only in equal shares.”

(8) It has been declared that sons may part the effects after the  
 death of the mother and father. There the Author states an exception  
 in regard to the mother’s (separate) property :

20 Yājñavalkya, Verse 117 (3rd quarter)

Of the mother’s (property) the daughters (shall take) the residue  
 (after the payment) of debts.

Mitākṣharâ:—(9) *Mâtur*, the Mother’s property, *dubhitâro*, the dau-  
 ghters shall divide, *ṛnâchchheṣham*, the residue of debt i. e., the residue  
 25 (remaining) after the discharge of the debts contracted by the mother.  
 Hence, the purpose (of the preceding part) of this text is, that when  
 the mother’s assets are equal to or less than her debts, the sons may  
 (take and) divide them. (10) The<sup>5</sup> meaning is  
 \*Page 79. this: A debt incurred by the mother, must be  
 30 discharged by the sons only, and not by the daughters; but the

1. *Āpastamba* II.6.14.8. 2. *Āpastamba* II.6.14.9. 3. *Āpastamba* II.6.14.11.

4. This is a passage from the *Taittirīya Veda*—Bāḷambhaṭṭa. There is a mis-  
 take in the print of the text; for ‘स्व मनु । पुत्रेभ्यो’ read ‘मनुः पुत्रेभ्यो...भ्यते’

5. See *Vithalrao vs Ramrao*, 24 Bom. 317—2 Bom. L. R. 154-156

daughters shall take the residue of her assets after the payment off of her debts. And this is proper. For by the rule<sup>1</sup>: "A male child "is procreated if the male seed predominate, a female child by the "prevalence of the female," as portions of the ( body of the ) female ( parent ) abound in the female children, the *Strīdhana* property goes to the daughters, and as portions of ( the body of ) the father abound in the male children, the father's estate goes to the sons.

5

(11) Even<sup>2</sup> there, a special rule has been propounded by **Gautama**<sup>3</sup>, "The *strīdhana* property goes to her daughters unmarried, and "( failing them ) to the unprovided". The meaning of this is this: If there be a competition of married and unmarried daughters, to the unmarried alone goes the *strīdhana*; and if among the married daughters there be a competition between the endowed and the unendowed ( daughters ) it belongs exclusively to such as are unendowed. 'Unendowed' means destitute of wealth.

10

15

( 12 ) In answer to the question, "in the absence of daughters "who should take the residue of the mother's estate that may remain "after payment of her debt"? the Author adds :

Yājñavalkya, Verse 117 ( last quarter )

In their default, the issue ( succeed ).

20

**Mitākṣharâ**:—( 13 ) Tâbhya, in *their* absence, *i. e.*, of the daughters *rite i. e.*, in *default* of daughters, *anwayah*, the *issue*, *i. e.*, the sons and the like others, should take. This, moreover, was already demonstrated by the text:<sup>4</sup> "The sons should divide equally...after the parents &c." but it is here expressly declared for the sake of greater perspicuity.

25

1. Manu, Ch. III. 42.

2. See *Bâlabhāṭṭi* p. 142

3. Ch. XXVIII-22.

4. Cf. *Yājñavalkya* II. 117. p. 1002 ( above ).

## Vîramitrodaya

Now the Author mentions the partition when the father is dead.

## Yājñavalkya, Verse 117

*Pitroh*, 'of the parents' *i. e.*, of the mother and the father; *ṛktham*,  
 5 'assets,' *ṛnam cha*, 'debt also,' *ūrdhwam*, 'after them,' *i. e.*, after the death  
 of the parents; *sulāh*, 'sons,' *i. e.*, the issue. *Samān vibhajeyuh*, 'should  
 divide equally.'

*Mātur*, 'of the mother,' the wealth, her *duhitaro*, 'daughters' also,  
 10 equally with the brothers, if a residue remains over after the discharge  
 of the mother's debts, then they should take. The debts, the sons  
 alone should pay.

*Duhitṛnāmṛte*, 'in default of daughters,' *i. e.*, in the absence of dau-  
 ghters, the daughter's sons, should get the share which would have been  
 obtained by their mother. So says **Manu**<sup>1</sup>: "But when the mother has  
 15 "died, all the uterine brothers and the uterine sisters shall equally divide  
 "the mother's estate. To the daughters of those (daughters), to those  
 "even according to proportion." "Should divide the property," is what  
 follows. In the text of **Nârada**: "Of the mother, the daughters; in the  
 "absence of daughters, the right for an equal share is of the maidens  
 20 "only." That has been stated by **Bṛahaspati**<sup>2</sup>: "*Stridhana* shall belong  
 "to the children; the daughter also will be a sharer in it, if she be not in  
 "coverture; the married, however, gets just a trifle as a mark of honour."  
 'To the children,' *i. e.*, to the sons. 'In coverture' *i. e.*, married, 'as  
 a mark of honour' *i. e.*, resulting as an indication of simply res-  
 25 pectful regard. 'A trifle' such as a cloth &c. **Gautama**<sup>3</sup>: "The  
 "*stridhana* property goes to the daughters unmarried, and (failing them)  
 "to the unendowed." "Unendowed' means childless, unlucky, and  
 "having a poor husband," so says **Ratnākara**. **Manu**<sup>4</sup>: "Whatever may be  
 "the separate property of the mother, that is the share of the unmarried  
 30 "daughter." *Yautakam* 'separate property,' at the time of marriage,  
 received from the father and others. **Vasiṣṭha**<sup>5</sup>: "Now the distribution  
 "of *dāya* among brothers. And those women who have no children, for  
 "them, until after they bear sons," 'women' here has connection with  
 (the word) 'brothers.' Similarly of a widow about whom there is an  
 35 expectation for a son, a share for a brother's wife should be constituted.

1. Ch. IX. 192, 193.

2. XXV. 85.

3. XXVIII. 22.

4. IX. 189.

5. XXVII. 40-41.



On a son being born to her, that share shall belong to the son. Upon a certainty of the absence of a son, however, that portion should be taken by the husband's brothers and the like.

After the father, says Brhaspati<sup>1</sup>: "In his absence, however, the  
"mother shall take an equal (share) to that of a son. The mothers shall  
"take equal shares with these, and the maidens a fourth part." 'Mother'  
*i. e.*, one having sons. 'Mothers' *i. e.*, the step-mothers without sons.  
These are all entitled to a share equal to a son's. Of these, the sister  
*i. e.*, the unmarried daughter (of the father) becomes entitled to a  
fourth share in the father's property. This is the meaning.

5

10

Vyāsa: "The childless wives of the father, however, have been  
"declared to be partakers of an equal share." (117)

### Śūlapāṇi

The Author mentions partition after the father's death.

#### Yājñavalkya, Verse 117

15

When sons, all are of eminent qualities or of inferior qualifications,  
then after the death of the mother and the father after making equal  
divisions of the father's property as also of the debts, should make the  
distribution.

What, moreover, has been said by Manu<sup>2</sup> viz., "Of the eldest, the  
"twentieth (part) shall be the additional share," that has a reference to the  
youngest when of inferior qualifications. In the case of those with high  
qualifications, a prohibition for an additional share having been laid by  
himself viz., "There is no additional share from among (brothers)  
"equally skilled in their occupations."

20

25

The property of the mother, as may remain after discharging the  
debts, the daughters should make equal (divisions) and take. Gautama<sup>3</sup>  
states a special rule: "The *Strīdhana* is of the daughters, unmarried as  
"well as the unendowed." 'Unendowed' *i. e.*, although married, the  
childless, the moneyless, the widowed, as also the unlucky.

30

In the absence of these, the issue, *i. e.*, the sons, sons' sons, and the  
rest. (117)



[Colebrooke Sect. IV]

[Effects not liable to partition.]

(1) The Author mentions things not liable to partition.

Yājñavalkya, Verses 118, 119

5 Without detriment to the paternal estate whatever else is acquired by a man himself, as a present from a friend, as also a nuptial present, shall not belong to the co-heirs (118).

10 Nor shall he, who recovers hereditary property which had been taken away, give it up to (his) co-parceners, nor also what was gained by learning (119).

Mitākṣharâ:—(2) *Pitrdravyâwirodhena*, without detriment to the estate of the father or the mother, *yat swayamarjitam*, that which is acquired by a man himself, *maitram*, a present from a friend, i. e., obtained from a friend, *audwâhikam*, a nuptial present, i. e.,  
15 obtained at the marriage, *tat na bhavet*, that shall not belong, *dâyâdânâm*, to the co-parceners, i. e., the brothers. Any property, whatever, which had descended in succession, *kramât*, from paternal ancestors, *hrtam* and, had been taken away by others, and through inability or any other cause, had remained unrecovered by the  
20 father and the rest, he among the sons, who recovers it with the consent of the rest, *tad dââyâdebhyo na dadyât*, shall not give up to (his) co-parceners, i. e., to the brothers or the rest; the recoverer alone shall take it. (3) Here, if it be land, the recoverer takes the fourth part, but the remainder, however, belongs to all equally: as says Śaṅkha "If one alone  
25 "recovers land (inherited) in regular succession and which had been "formerly lost, having first given him a fourth part, the rest<sup>1</sup> may

1. Including the acquirer himself—Bālabhāṭṭi.

The rule here stated "was intended to apply strictly to hereditary property of which the members of the family had been violently or wrongfully dispossessed or adversely kept out of possession, for a length of time:—"Property unjustly detained which could not be recovered before" is the import of Manu IX. 209," *Viśalatchy vs. Ammasami*, 5 Mad. H. C. R. 150 at 157. See also West and Bühler on Hindu Law, p. 71 (3rd Edn). Accordingly it was held, in *Bajaba vs Trimbak*, 34 Bom. 106, where certain family property was allotted to a member of one branch of the family in virtue of a compromise and the same was purchased by a member of another branch with his own money not forming part of the joint family property, that the rule stated in the text here did not apply to such a case,

“divide the remainder according to their proper shares.” (4) In the expression, “In regular succession” the word “inherited” is understood. (5) Likewise, *yallabdhām*, *what was gained*, *vidyayâ*, *by learning, i.e., by the study of the Vedas or by teaching or by expounding the meaning of the Vedas*; that also he need not give up to his co-parceners, but the acquirer himself should alone take. 5

(6) Here, moreover, the expression “without detriment to the paternal estate, whatever else is acquired by a man himself” must be everywhere<sup>1</sup> understood. Without detriment to the paternal estate what was obtained from a friend, without affecting the paternal estate what was obtained as a nuptial present, without expenditure of ancestral property what was recovered of the hereditary property, without use of the paternal wealth what is gained by learning, and thus it is to be connected with each member of the sentence in this manner. And hence, at the charge of the patrimony, what is obtained from a friend as the return of an obligation conferred, what is received as a nuptial present at a marriage concluded in the *Āsura*<sup>2</sup> form or the like; and what is recovered of the hereditary estate by the expenditure of paternal wealth, and what is gained by learning acquired at the expense of ancestral wealth, all that must be shared in by all the brethren and also by the father. (7) Moreover,<sup>3</sup> from the very fact that the clause “without detriment to the paternal estate” is in every 10 15 20

1. *i. e.*, with all, सर्वशेषः *i. e.*, must be taken by implication to be predicated of each kind of individual acquisition enumerated immediately further on.

2. At the *Āsura* form of marriage, receipt of money by the father or his kinsmen from the bridegroom is the principal feature.

3. The reading here adopted is in accord with that of the *Subodhini* (see Collections, Vol. II, p. 50, ll. 7-10). The commentator says that as these acquisitions (*viz.*, friendly gifts &c.) made at the charge of the patrimony are liable to be shared, so anything obtained as a mere gift, pure and simple, and not being included among these acquisitions must be subject to partition though procured without the use of the paternal goods.

The author of the *Bālabhāṭṭi* gives another reading, *viz.*, न तथा (*na tathâ-*) “not thus”, and according to this reading donations pure and simple will be excluded from the common partible property. Even there, the Author notices the reading given and adopted in the text here. (See *Bālabhāṭṭi*, Sk. p. 144 ll. 19-20.) “क्वचिन्नरहितः पाठः”.

place understood, even what is obtained as a gift,<sup>1</sup> without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, it (*i. e.*, the text) need not have commenced by specifying “gifts from friends,” “nuptial presents” and other similar acquisitions.

\* Page 80.

(8) It may be urged that the enumeration of friendly gifts and

An Objection.

similar acquisitions is pertinent, as showing that gains are exempt from partition, even though obtained at the expense of the patrimony. To this the reply is :

The Answer.

Were it so, it would be inconsistent with well-established usage,<sup>2</sup> and also would contradict the text of *Nārada*<sup>3</sup> in regard to gains of science, *viz.*, “He, who maintains the family of a brother while he was acquiring learning,<sup>4</sup> shall take a share in the gains of learning, be he ever so ignorant (himself).” Moreover, the definition of wealth, not participatable, as being acquired by learning is propounded by *Kātyāyana*<sup>5</sup> thus : “that wealth

1. प्रतिग्रह (Prati-graha)—is a gift pure and simple.

2. समाचार—शिष्टाचार “the received practice of unerring persons.” Colebrooke.

3. Ch. XIII. 10.

4. विद्यामधिगच्छतः—अधिगम् is to acquire—a free translation would be—while he was receiving education. The meaning is that such knowledge would not be knowledge acquired exclusively by the acquirer alone, but jointly with the help of a brother who took care of his family. And this is a fair rule.

5. This definition of *Kātyāyana* is not exhaustive. See *Durga Dut Joshi vs Ganesh*, 32 All. 305 at p. 312. and also observations in Ghose’s *Hindu Law*, Second Ed. p. 520-521. The result of the rulings on this text is—that the fruits of an ordinary elementary education could not be regarded as the gains of science acquired at the expense of ancestral wealth. *Metharam vs Revachand*, 20 Bom. L. R. 566; 45 I. A. 41.

See *Paulien Valor Chetty vs Surya Chetty*, 1 Mad. 252. s. c. 4 I. A. 109-118. *Lachmin Kuar vs Debi Prasad*, 20 All. 435 approving *Lakshman vs Jamnabai* 6 Bom. 225 and *Krishnaji vs Moro* 15 Bom. 32.

The detriment to the paternal wealth must be of an appreciable character, the mere fact that some patrimonial wealth was used for some time will not convert self-acquisition into a joint property. *Bachcho Kunwar vs Dharma Das*, 28 All. 347.

Gains of prostitution were held to be self-acquisition. *Boologam vs Suorman*, 4 Mad. 330. A Vakil’s gains were also held to be his self-acquisition. *Durvasalu Gandharudhu vs D. Narasammah*, 7 Mad. 47. See also *Dhanukdaree Lall vs Ganpat Lal*, 10 Cal. 122. and *Bhagirthibai vs Sadashiv*, Bom. H. C. P. J. (1880) page 126.

"which is gained by means of learning acquired from another with the  
"help of maintenance received from strangers, is termed acquisition  
"through learning." (9) Moreover, if the expression "without  
"detriment to the paternal estate" be taken as a separate clause, any-  
thing obtained by gift would be exempt from partition contrary to  
established usage. (10) This very thing has been made clear by  
**Manu**<sup>1</sup>: "What one acquires by his labour without using the patri-  
mony, he need not give up to the co-heirs; nor what he has gained  
"by science." (11) *By labour*—by service, war, or the like.

(12) Indeed it is unnecessary to declare, that effects obtained  
as presents from friends, and similar acquisitions  
made without using the patrimony, are exempt  
from partition, since there was no rule directing a partition (of these).  
It is a well-known rule that what is acquired by one belongs to him only  
and to no other person. While a prohibition (necessarily) implies a  
possible<sup>2</sup> supposition of the contrary.

(13) Here a certain writer suggests the existence of a previous  
supposition thus: "Whatever property the eldest acquires after the  
"father's death, a share of that belongs to the younger brothers, pro-  
"vided they have duly preserved learning," by interpreting this text,<sup>3</sup>  
to mean—that 'if the eldest, youngest, or middlemost (acquire property)  
whether after the death of the father or when he is not dead, (a share  
shall accrue) to the rest whether younger or elder', grounds do exist  
for inferring a supposition that gifts from friends and the like are  
liable to partition, whether the father be alive or dead, and so this<sup>4</sup> is  
prohibited.

(14) The argument is erroneous. Here there is no prohibition  
of anything arising by inference, but an explanatory  
repetition<sup>5</sup> of what was demonstratively true:

1. Ch. IX. 208. Lord Sumner has summed up the entire case law in *Gokulchand vs Hukmchand* 48 I. A. 162. See Act XXX. 1930 under which all self-acquisitions have been made indivisible. The Act has, according to S. 2 (b), retrospective effect.

2. प्राप्त—or things प्राप्त—are things previously known or assumed as established.

3. Of Manu Ch. IX, 204.

4. i.e., the rule which may be set up as arising from inference or implications.

5. अवतार—An explanatory repetition of or reference to what is already men-  
tioned.

for most of the texts in this chapter are merely<sup>1</sup> repetitions of what is already well-known to the world.

(15) Or you may be satisfied with considering this as an exception to what is suggested by the text<sup>2</sup> : “All the brethren shall be  
5 “equal sharers of that which has been acquired by them in concert.” And it is therefore a mere error to deduce such a suggestion from the word “eldest” and the like in the text<sup>3</sup> before cited *viz* : “What-  
“ever property the eldest acquires after the father’s death &c.” Therefore this passage must be interpreted as an exception to the  
10 general doctrine, deduced from texts concerning gifts from friends and the rest *viz*. that they are exempt<sup>4</sup> from partition, both before the father’s death and after his demise.

(16) So, other things exempt from partition have also been enumerated by **Manu**<sup>5</sup> : “Clothes, a vehicle, an ornament, cooked food,  
15 “water, and women, (property intended for acts which help) the “acquisition<sup>6</sup> and preservation of property, as well as the common “way, are declared not <sup>7</sup>liable to partition.” (17) The indivisibility attaches only to *clothes* which are not worn. What is worn by each person belongs exclusively to him. As to what was worn by the  
20 father, these should be given by the brethren partitioning after (the death of) the father, to the Brāhmaṇa who partakes of the food at his obsequies : As says **Brhaspati**<sup>8</sup>, “The clothes, ornaments, bed, and “similar articles belonging to the father, as also his vehicle and the

1. लोकसिद्धस्यैव अनुवादकान्येव—Bālabhāṭṭa thus explains the two *śloka* :—“The first excludes the suggestion that it was established by the rule of Śāstra, and the second excludes the suggestion of a prohibition.”

2. Of Brhaspati Ch. XXV. 14.—Bālabhāṭṭa.

3. *i. e.*, the text of Manu IX. 204, cited above, at p. 1011.

4. There is a mistake in the print of the Sanskrit on page 80 l. 16: Instead of वा विभाज्यत्वेन read वाऽविभाज्यत्वेन.

5. Ch. IX, 219.

6. योग is the acquisition of something not in the possession of the owner (अप्राप्तस्य प्रापणम्), and क्षेम is the preservation of that which has been acquired (प्राप्तस्य रक्षणम्). As sacrifices and other pious acts further such acquisitions and preservations, Colebrooke has translated the expression as sacrifices and pious acts. This term has been explained by Vijñāneśvara himself further on (see p. 1014 ll. 9-25).

7. Easement. *Shantaram Balkrishna vs Waman Gopal*, 47 Bom. 389.

8. Ch. XXV. 85.

"like, should be given, after honouring him<sup>1</sup> with fragrant drugs and flowers, to the person who partakes of the funeral repast." But new clothes are indeed subject to distribution.

(18) *A vehicle i. e.*, the means of conveyance, such as, horses, litters and the like. Here also, that on which each person rides, belongs exclusively to him. As for the father's, (it should be disposed of) similarly as the clothes. If the horses and the like be numerous, they must be distributed among co-heirs who live by the sale of them. If there cannot be a division on account of the unevenness of the number, they belong to the eldest; *Vide* the text of **Manu**<sup>2</sup>: "Let him never divide a single goat or sheep, or a single beast with uncloven hoofs; a single goat<sup>3</sup> or sheep it has been prescribed, belongs exclusively to the eldest." (19) As to *ornaments* also, that which was worn by each person is exclusively his. What was not worn, is common, and is indeed liable to partition. "Such<sup>4</sup> ornaments, as are worn by women during the life-time of their husband, the heirs (of the husband) should not divide among themselves; those who divide become degraded." By specifying particularly "such ornaments as are worn" it appears that those which are not worn are liable to a division. (20) *Cooked food*—such as boiled rice, sweet cakes and the like—that also is exempted from partition (and) should be consumed according as circumstances allow. (21) *Water i. e.*, a reservoir of water, such as a well and the like. And that being uneven,<sup>5</sup> must not be divided by regard to its value, but is to be enjoyed by turns.<sup>6</sup> (22) *Women, i. e.*, *Dâsis* when uneven, must not be divided by (regard to) the value, but should be made to work by turns.

1. Colebrooke Translates *them*. Meaning that the worship with fragrant drugs and flowers is to be offered to the things given and not to the person to whom they are given. It is better that the worship is taken to be offered to the recipient of the things than to the things themselves.

2. Ch. IX. 119.

3. Kulluka and other commentators of Manu add that not even the price of such is divisible. ज्येष्ठस्यैव तत्स्यान्न तु तत्तुल्यद्रव्यान्तरदानेन समीकृत्य विक्रीय वा तन्मूल्यं विभजेत् ।

4. Manu IX. 200.

5. विषमम् 'incommensurate' 'indivisible in equal parts' would give an accurate idea.

6. See *Govind vs Trimbak* 36 Bom. 275-277.



But women kept<sup>1</sup> in concubinage (by the father), such as adulteresses<sup>2</sup> and others, although even in number, must not be shared by the sons, *vide* the text of **Gautama**<sup>3</sup>: "Nor shall there be a partition of "women connected (with the father or other members of the family)."

- 5 \*Page 81 (23) The term *Yogakṣhema* is a conjunctive compound word made of (the two words) *Yoga* and *Kṣhema*. By the word *Yoga* is signified a cause of obtaining something not already obtained—*i. e.*, a sacrificial<sup>4</sup> act to be performed with fire consecrated according to (the rules of) *S'ruti* and *Smṛti*.
- 10 By the term *Kṣhema* is denoted an auspicious act which becomes the means of conservation of what has been obtained, such as the giving of alms elsewhere<sup>5</sup> than at the altar, or the making of a tank, or a garden and the like. Both these, though ancestral, or though accomplished at the charge of the patrimony, are indivisible as **Laugākṣhi**
- 15 declares: "The learned have named a conservatory act *Kṣhema*, "and a sacrificial one *Yoga*; and both these are pronounced indivisible, "as also the bed and the seat<sup>6</sup>." (24) Some hold, that by the compound term *Yogakṣhema*, those who effect sacrificial and conservancy acts are intended *e. g.* the king's counsellors, the stipendiary priests, and the
- 20 rest. Others say, parasoles, cow-tails, weapons, shoes, and similar things, are meant. (25) *The Common way*, or road of ingress and egress to and from the house, garden, or the like, is also indivisible. (26) As to the exclusion of land from partition as stated by **Uśanas** (in the text): "sacrificial gains, land, written documents, prepared food, water,

1. अवरुद्धा—This term occurs later on at II-290 and **Vijñāneśvara** explains it thus: "A female slave kept in the house and restrained from having intercourse with other men as a safeguard against any breach in the service". दास्यः स्वामिना बध्नायाहानियुदासार्थं गृह एव स्यात्तद्व्यमित्येवं पुरुषान्तरभोगतो निरुद्धा अवरुद्धाः. Also see *Mst. Haidari vs Narindra*, 1 Luck. 184; and *Bai Monghibai vs Bai Nagubai*, 53 I. A. 153.

2. स्वेरिण्यायाः See **Nārada Ch.** XII 49-53.

3. **Ch. XXVIII**, 47.

4. योगक्षेम—योग is obtaining something not secured. (अप्राप्तस्य प्रापणम्), and क्षेम is the preservation of that which has been secured. (प्राप्तस्य परिरक्षणम्).

इष्टापूर्त—The two kinds of acts which are the means of acquisition and preservation are called इष्ट and पूर्त and are thus defined :

इष्ट—अग्निहोत्रं तपः सत्यं वेदानां चैव पालनम् । आतिथ्यं वैश्वदेवञ्च इष्टमित्यभिधीयते ॥

पूर्त—वापीकूपतडागादिदेवतायतनानि च । अन्नप्रदानमारामः पूर्तमित्यभिधीयते ॥

5. बहिर्वेदिदानम् "Erecting an outer sacred wall" would also be another way of translating it and may suit the context.

6. आसनम्—Colebrooke translates it as "chair."

“and women, are indivisible among kinsmen even to the thousandth  
“degree,” that has a reference to sons of a *Brāhmaṇa* by women of the  
*Kṣatriya* or other castes, *Vide* the text:<sup>1</sup> “Land obtained by accept-  
“ance of donation, must not be given to the son of a *Kṣatriyā* or of  
“any other wife of an inferior tribe; even if the father give to such 5  
“sons, on his death, the son of the *Brāhmaṇi* wife may resume it.”  
(27) *Sacrificial gains*, i.e. acquired by officiating<sup>2</sup> at religious sacrificial  
performances. (28) What is obtained through the father's favour,  
will be subsequently<sup>3</sup> declared exempt from partition. The supposit- 10  
ion, that any thing, acquired by transgressing restrictions regarding  
the mode of acquisition, is indivisible, has been already refuted.<sup>4</sup>  
(29) It is (thus) settled that whatever is acquired at the charge of  
the partimony, is subject to partition. But in such a case, the acquirer  
shall have a double share under the text of *Vasiṣṭha*<sup>5</sup>: “And if any 15  
“one, among them,<sup>6</sup> has made himself alone an acquisition, he may  
“take a double portion of it.”<sup>7</sup>

### Vīramitrodaya

Now the Author states property which is not liable to partition

#### Yājñavalkya, Verses 118, 119

Without detriment to i.e. without spending the property of the parents, 20  
what property otherwise, i.e. such as by trading in merchandise and like  
means has been acquired by himself, what moreover was *maitram*, ‘a  
friendly gift,’ i.e. obtained from a friend, and also *audwāhikam*, ‘nuptial’  
i.e. obtained at a marriage, *taṭ*, ‘that’, is not liable for distribution among 25  
other *dāyādānām*, ‘co-parceners’. Even property which had descended  
in succession from the ancestors, such as the father, grandfather, &c.,  
and having been taken away by others, and was not recovered by the  
father &c., owing to incapacity, the one who recovers by his own capacity,  
such property he should not give to the co-parceners. That has been  
declared by *Kātyāyana*<sup>8</sup>: “With the help of maintenance preferred by 30

1. Of *Brhaspati* Ch. XXV. 30—*Bālabhadda*.

2. यज्ञेन (causal) i.e. by causing a sacrifice to be performed by another.

3. II, 123 (1)

4. See p. 987 ll. 25 etc.

5. Ch. XVII. 51.

6. i.e., brethren separating.

7. In a recent case a special (half) share was given to a member in view of his  
important services to the family. *Ananthachari vs Krishnaswami* (1938) Mad. 410.

8. Verse 867.



“strangers when the learning was acquired elsewhere, wealth obtained on  
“account of such learning is termed acquisition through learning.” Here  
also, according to **Prakāśa**, the basis of indivisibility is the absence of any  
connection with the paternal estate, that is not proper; because the  
5 fault of uselessness would arise by the separate mention.

This, moreover, is not liable to partition when (his) family is not  
maintained by the co-parceners during the period of the acquisition  
of learning by him; if not, it is certainly divisible, vide this text of  
**Kātyāyana**<sup>1</sup>: “He, who maintains the family of a brother while he was  
10 “acquiring learning, shall take a share in the gains of learning, be he  
“ever so ignorant (himself)”.

By the use of the first *cha* is indicated what was obtained respect-  
fully at the time of the *Madhuparka* (reception) as stated by **Manu**.  
By the use of the word *cha* a second time, however, are added “What  
15 “was given by the grandfather, or by the father out of affection, that  
“should not be taken away from him, as also that which may have been  
“given by the mother”, as stated in this text of **Vyāsa**, as also that which  
the Author will state hereafter. By the use of the word *eva*, ‘only’, twice,  
are excluded (both those kinds) by regard to their having no connection  
20 with the paternal wealth. By the use of the word *tu*, ‘however’, the co-  
operation of any other co-parcener in the recovery is excluded. (118,119).

### Śūlapāṇi.

The Author mentions property not liable to partition

#### Yājñavalkya, Verse 118

25 Without injury to the paternal estate, by husbandry and like other  
means, what has been acquired elsewhere, acquired through friendship, or  
received at marriage, that is not capable of distribution among the  
sharers (118).

#### Yājñavalkya, Verse 119

30 Property descended from the father, grand-father &c., and lost by  
the father through the absence of strength, he who recovers it back, need  
not give it back to the sharers if he is unwilling. Similarly what is  
gained through learning he should also not give. **Kātyāyana** mentions  
gains of learning: “With maintenance offered by another, when a  
35 “man acquires learning, what is obtained in due course with this, that is  
“called gains of learning.” (119).

1. As found in Nārada Ch. XIII. 10.

( 30 ) The Author propounds an exception to this rule  
Yājñavalkya, Verse 120 ( 1 ).

But if the Common stock be improved, an equal division is ordained.

Mitākṣharâ :—( 31 ) Among unseparated brethren, *sâmānyarthasya*,  
*if the common stock, samutthāne, be improved, i. e., augmented by any* 5  
one of them through agriculture, commerce, or similar means, an  
equal distribution nevertheless takes place ; and a double share is not  
allotted to the acquirer.

Vîramitrodaya

To this the Author mentions an exception

10

Yājñavalkya, Verse 120 ( 1 )

In the money-earning business carried on by all the brothers  
together in common, however, such as in the form of agriculture, trading  
in merchandise &c., all have an equal share. By the use of the word  
*tu*, ' however,' the Author discriminates the indivisibility in the case of 15  
acquisitions made without the use of the paternal wealth. 120 ( 1 ).

[ Colebrooke, Sect. V. ]

[ Equal rights of father and son in ancestral property. ]

( 1 ) The distribution of the paternal estate among sons has  
been shown. The Author next propounds a special rule concerning 20  
the division of the grandfather's effects by grandsons

Yājñavalkya, Verse 120 ( 2 ).

Among claimants by different fathers, the allotment of shares shall be  
by regard to the fathers.

Mitākṣharâ :—( 2 ) Although grandsons have by birth a right of 25  
ownership in the grandfather's estate equally<sup>1</sup> with sons, still the  
distribution of the grandfather's property must only be adjusted<sup>2</sup>  
through their fathers and not with reference to themselves. The  
meaning here expressed is this : when unseparated brothers die,

1. अविशिष्टम्—Without any discrimination or distinction.

2. पितृद्वारेण—i.e., by regard to their father *through* whom they are connected with  
the remoter ancestor or with the family generally. द्वार—means a door—medium”.

leaving<sup>1</sup> male issue and one has two sons, another has three sons, and a third has four sons, and thus the number of sons (of these) is unequal, then the two receive a single share which appertained to their father; the other three also take a single share appertaining to their father, and the (last) four also obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue, the same method should be observed, the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed<sup>2</sup> by the texts. (120).

### Vîramitrodaya

Now in the grandfather's property the Author mentions the share of the grandsons through different fathers.

### Yājñavalkya, Verse 120 (2)

Where one has one son, another has four sons, there, two allotments should be made; and of these one share should be taken by (one who is) the only son of his father; while by all the four sons of the other together should be taken the other share. By the use of the word *tu*, 'however,' it discriminates the shares for the grandsons by their number. 120 (2).

### Sûlapâṇi

### Yājñavalkya, Verse 120

When, of the common stock, there occurs an increase by means of agriculture, trade in merchandise &c., then the distribution shall be equal. In such a case the apportionment of an additional share should not be made on the consideration that 'he has brought in much more', or the like. This is in regard to the unlearned; so says *Manu*<sup>3</sup>. "If the property belonging to those all of whom are unlearned be acquired by agriculture

1. Lit : after procreating sons.

2. i. e., This is the meaning of the text : when the claimants are removed by more than one degree from the common ancestor, the division shall be by reference to the root of each group, and not by regard to the several individual claimants themselves. In other words the distribution will be *per stirpes* and not *per Capita*.

This text has been referred to in several cases, see *Gangu vs Chandrabhagabai* 32 Bom. at 284. *Kalgowda vs Somappa* 33 Bom. at 681. *Debi Prasad vs Thakurlal* 1 All. at p. 111. *Appaji vs Ramchandra* 16 Bom. at 33, 34.

3. Ch. IX. 205.

"in such a case the distribution shall be equal in the property which is not paternal; this is the rule". 'Agriculture' i.e., tilling the soil. "Not paternal" i. e. in the property other than that acquired by the father.

*Anekapitrñān*, i.e., those who are the sons of different brothers; of these, although they be even or odd in number, (still,) when the grand-father's property is being distributed, whatever was the share of their father, that alone would be (their share), and not that the determination of the share be distributively for each. (120).

(3) If the father be alive and separate (from the grandfather), or if he have no brothers, (it may be urged that) the grandson would not have a (right to) partition in the grandfather's estate since it has been directed that if the father be deceased "shares shall be allotted in the "right of the father"; or admitting a partition to take place (it may be urged that) it should be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt, the Author says

Yājñavalkya, Verse 121.

Land which was acquired by the grandfather, a corrody, and also chat- tels; in these the ownership of the father and also of the son is the same.

Mitākṣharā : (4) Bhūh, land, a rice-field or other ground. Nibandhaḥ, corrody, i. e., from each bundle of leaves so many leaves<sup>2</sup>; similarly so many nuts from an orchard of areca<sup>3</sup>—as has been defined<sup>4</sup> (before). Drawyam, chattels, gold, silver &c.

\* Page 82.

(5) Such as was acquired by the paternal grand- father, through acceptance of gifts, or by conquest or other means; tatra pituḥ putrasya cha swāmyam, in these the ownership of the father and of the son, is universally known,<sup>5</sup> and bearing this in mind

1. पौत्रस्य पैतामहे द्रव्ये विभागो नास्ति—which Celobrooke translates as : "a partition of the grand-father's estate with the grandson would not take place."

2. Colebrooke translates this as "from a plantation of betle pepper".—But the original does not specify any kind of leaves. The general word पर्ण (parṇa) is used.

3. क्रमुकफल—The word क्रमुक is not conjoined to the areca tree alone.

“क्रमुकस्तु पुमान् भद्रमुस्तके ब्रह्मादारुणि । फल कार्पासिकायाश्च पट्टिकालोध्रुगयोः ॥” —मेदिनीकोशः

4. i. e. in com. on Yājñavalkya Âchârâdhyâya I. 318 p. 580 ll. 4-7.

5. See Telang J : in Appaji Narhar vs Ramchandra 16 Bom. 29 (F.B.) at p. 37 and Sargeant C.J. at pp. 33-34.; also Karuppi vs Sankara Narayan 27 Mad. at p. 312.

a partition takes place; *for, hi, i.e., since, the right is sadṛśam, the same, i. e., equal (or alike)*; therefore it is not that partition can be made only by the father's choice; nor is there a double share for the father. (6) Hence also it is ordained by the preceding text, (II. 120) that

5 "The allotment of shares shall be by regard to the fathers", although the right be equal. (7) The text (II. 114) "when the father makes

"a partition" relates to property acquired by the father himself. So also the text<sup>1</sup>: "Two shares let the father keep for himself, when mak-

10 "ing a partition" relates to self-acquisitions. The dependence of sons, as affirmed in the following passage<sup>2</sup>: "While both parents live,

"the control remains, even though he<sup>3</sup> has arrived at old age", must relate to effects acquired by the father or mother. Similarly the text<sup>4</sup>:

15 "They<sup>4</sup> are not masters, while their parents are living." (8) Thus, while the mother is capable<sup>5</sup> of bearing more sons, and the father

retains his worldly desires, even when the father does not desire partition, a distribution of the grandfather's estate does nevertheless

take place by the will of the son. (9) So likewise, if the unseparated

father is making a donation, or a sale, of effects inherited from the

20 grandfather, the grandson has even the right of prohibition. But if the effects were acquired by the father, he has no right of prohibition,

as he is dependent on him. On the contrary he must give his consent. (10) Consequently the difference is this: although he has a right by birth

in his father's and in his grandfather's property, still, since in regard to the father's property, he is dependent on his father and since the father

25 has a predominant interest as it was acquired by himself, the son must give his consent to the father's disposal of his own acquired property.

On the other hand, as regards the grandfather's estate, however, the

1. Of Nārada Ch. XIII. 12. See also Bṛhaspati XXV. 5.

2. Author unknown. Mr. Colebrooke in a note in his translation remarks that Bālabhāṭṭa assigns it to Manu, but it is not found in the Bālabhāṭṭi (see Collections, vol. 6, p. 152), nor in Manu.

3. Colebrooke translates it as "though *they* have arrived at old age," meaning the parents; but the reading of the Mitākṣharâ is जरयाऽपि समन्वितः—"even though he has arrived at old age"—i. e., the son.

4. [ "They have not power over it—the paternal estate—i. e., while their parents live" must be referred to the same subject. ] Colebrooke Tr.

5. सरजस्कायां मातरि—when the mother has the periods of menstruation.

(right of) ownership of both is without a distinction, and (consequently) the right of prohibition also exists.<sup>1</sup> (11) By the text:— “If “the father recover ancestral property not recovered by his co-“heirs, he shall not, unless willing, share it with his sons, for in “fact it was acquired by him”—while laying down that if the father 5 recovers property, which had been acquired by an ancestor, and taken by a stranger, but not recovered back by the grandfather, he need not himself share it, against his inclination, with his sons, just as is the case with his self-acquisitions, even *Manu* shows that the father, how- 10 ever reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather.

### VĪRAMITRODAYA

In regard to the ancestral wealth, on a partition with the father, the determination of the share is not at the pleasure of the father, but for the father a double, and for the sons, there shall be an equal share; 15 so the Author says

### Yājñavalkya, Verse 121

*Bhūh*, ‘land’, or gold and other kind of property, *“nibandho*, ‘a corrody,’ *i. e.* something settled on by the King, such as, a cess from a ferryman or the like, this, whatever was earned by the grandfather, 20 *tatra*, ‘there’, of the father, and of the son, *i. e.* of both, *ubhayor sadṛśam swāmyam*, ‘the ownership shall be equal’, and not that the partition shall be by the father’s option alone. This is the meaning.

Indeed: “In property acquired by the grandfather, immovable “as well as movable, an equal share has been declared for the father 25 “and for the son also”, in this text of *Bṛhaspati*<sup>3</sup> (there would) an equal share in contradiction to the text of *Nārada*<sup>4</sup> stated before. But in the text of *Bṛhaspati*, however, the meaning only is that the right to participation for a share is equal, and not the equality of shares also. The word *eva* ‘also’, follows the word *sadṛśa*, ‘equal’. By the use of the 30 word *cha* ‘and’, the Author adds that in the property acquired by the great-grandfather, the great-grandson has also the right of ownership (121).

1. These passages were referred to in the following cases: *Devi Prasad vs Gunvanti* Koer 22 cal. 410. *Kalgavda vs Somappa* 33 Bom. at p. 681. *Sital vs Madho* 1 All. at p. 397. *Muttayan Chetti vs. Sivagiri* 3 Mad. at p. 380.

2. Ch. IX. 209.

3. Ch. XXV. 3.

4. Ch. XIII. 12.

## Śûlapâṇi

## Yājñavalkya, Verse 121

*Nibandha*, 'a corrody', such as in the case of a mine &c. granted by the King and the like as a fixed grant of gold, &c. In regard to these, *i. e.* the land &c. of the father and of the son, the right of ownership is equal, therefore, the partition shall be at the desire of the son, and the distribution also shall be equal. So Brhaspati<sup>1</sup>: "In property acquired by the grandfather, immovable as well as movable, an equal share has been declared for the father and the son also." (121).

[ Colebrooke Sect. VI. ]

10

[ Right of a posthumous son and of one born after partition. ]

(1) How shall a share be allotted to a son born subsequently to a partition of the Estate? Anticipating this question the Author replies

Yājñavalkya Verse 122 (1).

15

When the sons &c. have been separated, a son who is ( afterwards ) born of a woman of the same Varna ( class ) shares the distribution.

Mitâkṣharâ:—(2) *Vibhakteṣhu*, among the sons<sup>2</sup> being separated, one born afterwards, *savarnâyâm*, of a wife equal in class, *vibhâgabhâk*, shall share the distribution. What is distributed, is a distribution. The distribution

20

is of the allotments of the father and mother. He shares that; and so he is a *Vibhâgabhâk* ( one who is entitled to a share in the distribution ). In other words, he obtains, after ( the demise of ) his parents, both their portions. The mother's portion, however, only if there be no daughter, for it is declared<sup>3</sup> that " Daughters share the

25

"residue of their mother's property, after payment of her debts." (3) Sons by a woman of a different tribe, however, receive merely their own proper share, from the father's estate. And as for the mother's property ( they get ) the whole of it.

30

(4) The same rule is propounded by Manu<sup>4</sup>: "A son, born after a division, shall take the parental wealth only". The term parental, *pitryam*, must here be interpreted as "appertaining to both father and mother", for it is ordained<sup>5</sup> that: "A son born before (partition), has no claim on the wealth of his parents; nor one begotten after "it on that of his brother". (5) The meaning ( of this text ) is this:

1. Ch. XXV. 3. 2. See *Dular Koeri vs Dwarkanath Misser* 32 Cal. at p. 241.

3. Yājñavalkya II 118 at p. 1008 ll. 5-6.

4. Ch. IX. 216.

5. By Brhaspati Ch. XXV. 18—Bâlabhattachi p. 154.



one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated; nor is one, born of parents separated,<sup>1</sup> a proprietor of his brother's allotment. (6) Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained<sup>2</sup>: "All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the<sup>3</sup> partition; those, "born before it, are declared to have no right." (7) As for those, however, who re-united themselves with the father after partition, the son born after partition should share with these the goods of the father after his death, as directed by Manu<sup>4</sup> "Or if there are any who "are re-united with him, he shall share with these." 122 (1)

\*PAGE 83

(8) When the sons have made a partition subsequently to the death of the father, how shall a share be allotted to one born afterwards? Anticipating this question the Author says

Yājñavalkya Verse 122 (2)

His allotment must be made only<sup>5</sup> out of the visible estate corrected for income and expenditure.

Mitākṣharā:—(9) A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is tadvybhāgaḥ, his allotment<sup>6</sup>.

(It may be asked) but whence shall it be taken? (So) the Author replies: dr̥śyāt, out of the visible estate, taken by the brethren. Of what sort? Aya-vyaya-viśodhitāt, corrected for income and expenditure. Āya,

1. i. e., from their elder children—Bālabhāṭṭi.

2. By Brhaspati Ch. XXV. 19—Bālabhāṭṭi.

3. Kalgauda vs Somappa 33 Bom. at 684; Krishna vs. Sami 9 Mad. 71.

4. Ch. IX 216.

5. Colebrooke translates "His allotment must absolutely be made &c." and in a footnote explains it by a reference to Subodhini. Subodhini, however, only states that the allotment should be made only from the visible &c. (दृश्यदेव तद्विभाग इत्यर्थः), premising this by explaining वा as being used in a restrictive sense (मूलवचनस्य वा शब्दोपधारणे)—see Subodhini, page 53, ll. 31-32.

6. His allotment—तद्विभागः i. e., the share of such a one born after partition.



income, is that which is produced daily, monthly, or annually. *Vyaya expenditure*, is the liquidation of debts contracted by the father. Out of the amount of property which has been corrected for such income and expenditure, a share should be taken and given as "his allotment."

5 (10) The meaning here expressed is this : Including in the several<sup>1</sup> shares the income thence arisen, and subtracting the father's debts, a small portion should be taken from the remainder of each of the shares respectively, and an allotment equal to their own portions, should ( thus ) be formed for the son born after partition.

10 (11) This must be understood to be likewise applicable to a nephew who is born, after separation, of a brother<sup>2</sup> who was childless at the time of partition, when the pregnancy of his widow was not manifest. (12) But if the pregnancy be manifest the distribution should be made after awaiting (her) delivery. As says *Vasiṣṭha*<sup>3</sup> : "Now  
15 "(follow the rules regarding) the partition of heritage among brethren. "And (let it be delayed ) until those widows who are childless, ( but are "pregnant ) bear sons." This text should be interpreted thus<sup>4</sup> : " Until " the delivery of those widows who are pregnant." 122 ( 2 ).

1 प्रातिस्विकेषु भागेषु *i. e.*, in each distributive share. प्रातिस्विक is the unit or basic quantity of a share.

2 *Bālabhṛṣṭi* notices another reading ( see p. 1551. 4 ), *viz.*, "अप्रजति" which connects it with the wife of the brother—there would, however, be no difference in meaning.

3 Ch. XVII 40—41.

4 Mr. Colebrooke adds the following note to this passage: "The most natural construction of the original text is "Partition of heritage is among brothers and women who are childless, until the birth of issue." The authors of the *Kalpataṛu* & *Chintāmaṇi* follow that interpretation and conclude that "a share should be set apart for the widow who is likely to have issue ( being supposed pregnant ) and when she is delivered, the share is assigned to her son, if she bear male issue; but if a son be not born, the share goes to the brethren, and the woman shall have a maintenance." The author of the *Smṛti-Chandrikā* acknowledges that to be the natural construction of words, but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text nearly as it is explained in the *Mitākṣharā viz.*, " Among brothers, who have continued to live together until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known; and does not take place immediately after the obsequies." *Viśveśvara-Bhaṭṭa* in the *Madana-Pārijāta* exhibits a similar interpretation: " Partition takes place after awaiting the delivery of widows who are evidently pregnant."

Vīramitrodaya

Now the Author states the share of a son born after partition

Yājñavalkya, Verse 122

*Vibhakteshu* 'after partition', by the sons, thereafter, *savarnāyām patnyām jātaḥ suto*, 'a son born of a wife of the same *varṇa*'; *vibhāga-bhāk*, 'shares the distribution'; i.e. from the property distributed in the partition among all the brothers, excluding the partition added by accretion and also what was spent, in the remaining property he becomes entitled to a share as may be properly due (to him). 5

If, however, the son born after partition be devoid of any qualification, then *drśyamātrāt*, 'only out of the visible estate', such as the cow, the buffalo &c. *āyasyayaṁviśodhitāt*, 'corrected for income and expenditure', of him i.e. the one born after partition, *vibhāgaḥ syāt*, 'shall the allotment be'. 10

If it be argued that under the text of Nārada: "when the mother "has ceased to menstruate and the sisters have been married", when there is a probability for (the appearance of) a brother, a partition having been prohibited in terms, how can it be possible for a son to be born after partition? To that the answer is, the desire of the father preponderating, the text of Nārada is set aside, otherwise *there would be the fault*<sup>2</sup> of the text under consideration being with no object (for its application). This text under consideration is in regard to one who at the time of the partition was in the womb. 15

In regard to one *born of the womb which had conceived after the partition*, Manu<sup>3</sup> says: "A son, born after a division, shall take the "wealth of the father only; or those who become re-united with him, he "may have a distribution along with them." The meaning of the word *or*, 'or', is that after the death of the father, he shall take the father's share from those who had re-united with the father. 25

Brhaspati<sup>4</sup>: "In the case of those of the uterine brothers who have "made a partition with the father, or those who are well provided—such "of those who are born latest, shall take the father's share." Similarly,— "Whatever has been acquired by the father after he had separated from "the sons, all that belongs to the son born after the partition; those born "before have been declared to be not entitled. As in the case of " (inherited) property, so also as to debts, as also in regard to donations, "pledges and sales, they are each not entitled, excepting as to the "exequial rites and watery oblations." (122). 30 35

### Śûlapâṇi

#### Yâjñavalkya, Verse 122

If the conception in the womb was not known at the time of the partition, but afterwards a child was born of a wife of the same caste, he shall take a share from all those who partook of a share, as says Viṣṇu<sup>1</sup>: "Sons who have separated from their father should give a share to one ( who is ) born after the partition "

As regards the conception after partition, however, Manu<sup>2</sup> says: " A son, born after a division, shall take the father's wealth only ; or those who had become re-united with him, he should share along with these."

*Dṛśyâdhweti*, ' or from the visible ' &c., i. e. what was not available at the time of the partition, that after being corrected for income and expenditure, whatever is found as the residue from such property, he gets as his own share. ( 122 ).

( 13 ) It has been stated that a son born after partition takes the whole of his father's goods as well as of his mother's. But, here, if the separated father or mother affectionately bestow ornaments or other present on a separated son, then in such a case the gift should not be resisted by the son born after partition, nor, even, if actually given must it be resumed. So the author says

#### Yâjñavalkya, Verse 123 ( 1 ).

The wealth which had been given by the parents to one, belongs to him.

Mitâkṣharâ:— (14) By the mother and the father, being separated (from their children), to a son separated before, what is given, such as an ornament &c., belongs exclusively to him ; and does not become the property of the son born after partition. ( 15 ) By a parity of reasoning, what was given to any one, even before partition, appertains solely to him. ( 16 ) So when there is no son born after partition, and the brethren divide the effects of the separated parents after their death, what had been given to each of them, belongs severally to each and is shared by none other. This must be understood.

[ Colebrooke Sect. VII. ]

[ Shares allotted to provide for widows and for the nuptials of unmarried daughters. The initiation of the uninitiated brothers defrayed out of the joint funds. ]

(1) When a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed by the text<sup>1</sup> : “ If he make the allotments equal, &c.” With a view to point out an equal participation of the mother even when the partition<sup>2</sup> takes place after the death of the father, the Author says

Yājñavalkya, Verse 123 ( 2 ).

Of heirs dividing after ( the death of ) the father, let the mother also take an equal share.

Mitākṣharâ :—( 2 ) Vibhajatām, of heirs dividing, piturûrdhwaṃ, after the father, i.e., after the death of the father, mâtâ api<sup>3</sup> haret, let the mother also take, anśam, a share, samam, equal, to that of her son; provided no strîdhana has been given. But if any had been given she is entitled to half a share, as the Author will mention<sup>4</sup> later on.

1. See Yājñavalkya II. 115 ( Sk. p. 77 ll. 9—10; Eng. Tr. p. 997 ll. 14—15 ).

2. See *Dular Koeri vs Dwarkanath Misser* 32 Cal. 241 and *Betti Kunvar vs Janki Kunvar* 33 All. 118, where at p. 121 the Court observes “ This ( i. e., this passage in the text allowing a share to the mother ) in our opinion implies an actual division of the family property, that is, a completed partition under which there is a division of interest as well as separate possession. We do not think that a mere severance of interest where no actual division of the property takes place confers on the mother a right to a share equal to that of her son.” See also *Shantayya vs. Mallappa* 40 Bom. L. R. 1029 at p. 1038.

And in *Sheo Narain vs Janki Pershad* 34 All. 505, the same court observes at p. 509 after referring to this text : “ It is thus manifest that Yājñavalkya and the author of the *Mitākṣharâ* make a distinction between partition during the life-time of the father and partition after his demise. In the former case a share is allotted to the wife of the father; in the latter, to the mother of the sons effecting a partition.” See also *Pratapmal vs Dhanabati* 63 I. A. 33. *Ravji vs Anant* 42 Bom. 535.

3. For a discussion as to the persons indicated by the word mother, see *Mari vs Chinnammal* 8 Mad. 118 at p. 121 &c. *Hushen Sab vs Basappa* 34 Bom. L. R. 1325. A step-mother, *Har Narain vs Bishambhar Nath* 38 All. 82, and even when the father is living *Pratap Singh vs Dalip Singh* 52 All. 596 ( F. B. ), a grand mother, *Kanhaia Lal vs Ganesh* 47 All. 127; but contra, see *Jamnabai vs Vasudeo* 54 Bom. 417; and in *Hosbanna vs Devanna* 48 Bom. 468, a step-grand-mother, were held to be entitled to a share.

4. Yājñavalkya II. 148.

## Viramitrodaya

- In the clause as “also what was obtained by learning”, with a view to point out the additional property implied in the word *cha*, ‘as also’, the Author states that one separated cannot obtain property from a brother to whom it has come as an affectionate gift

## Yājñavalkya, Verse 123

*Pitr̥bhyām*, ‘by the parents’, this (expression) is indicative of the paternal grandfather also.

- At a partition after the death of the father, not only that the brothers are entitled to a share, but their mothers also, and also the step-mothers—the co-wives (of the father), so the Author says, *Pituh*, ‘of the father,’ *ūrdhwam*, ‘after’ i.e. after the death. By the word *api*, ‘also’, are included the step-mothers (123).

## Śūlapāṇi

## Yājñavalkya, Verse 123

- By the mother and the father whatever has been given to their son, daughter, and the rest, such as an ornament &c. that belongs to him alone even after the death of the father; that should not be distributed.

- After the death of the father, when the sons make a partition, the mother also shall take a share equal to that of the son. So following the rule as to a sonless man, says *Brhaspati*<sup>1</sup>: “In his absence, however, the “mother gets a share equal to those of the sons”. *Vyāsa* states a special rule: “The sonless wives of the father have been declared to be entitled “to an equal share, as also the grandmother; all these have been declared “to be equal to the mother.” (123).

✓(3) If any of the brethren be uninitiated<sup>2</sup> when the father dies, (it may be asked) who is competent to complete<sup>3</sup> their initiation? So the author says

## Yājñavalkya, Verse 124 (1).

- The uninitiated (brothers), however, should be initiated by those brothers who have been initiated before.

*Mitākṣharā* :—(4) *Bhrātṛbhiḥ*, by the brethren, who make a partition after the death of the father, *asanskṛtāḥ*, the uninitiated, brothers *sanskāryāḥ*, should be initiated, at the charge of the common estate.

1. Ch. XXV. 64.

2. As to what is the meaning of initiation in the case of males and females see—*Sundrabai vs Shiv Narayan* 32 Bom. 81, at pages 86, 87—96 referring to and discussing the case in 27 Mad. 206. See *Subbayya vs Ananta Ramayya* 53 Mad. 84, where expenses for a daughter’s marriage were allowed in a suit between a father and sons. But marriage expenses of a male member cannot be allowed. See *Ganesh vs Srinivas* 30 Bom. L. R. 457.

3. को अधिक्रियते *Ko Adhikriyate*? Tr. “who has the authority” (to perform the ceremonies of these.)

(5) In regard to unmarried sisters, the Author states a special rule :

Yājñavalkya, Verse 124 (2).

And the sisters also, but by giving them, as an allotment, the fourth part of his own share.<sup>1</sup>

Mitākṣharâ :—(6) The meaning of the above passage (is this) : Bhaginyâscha, and the sisters also, who are not (already) married, must be disposed of in marriage by the brethren. By doing what ? By contributing a fourth<sup>2</sup> part of their own allotments.

\* PAGE 84.

Thus it appears, that daughters also participate after the death of their father. Here in saying "from his own share," the meaning is not that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed, but that the daughter of (a wife of) a particular caste shall be allowed to participate for a quarter of such a share as would be assignable to a son of the same caste as herself. The sense expressed is this : if (e.g.) the maiden be (the daughter of) a *Brâhmanî*, a fourth share becomes hers of so much as is (likely to be) the amount of an allotment for a son by a *Brâhmanî* wife.

(7) Thus, for example, if a certain person had one wife viz., only a *Brâhmanî*, and one son and one daughter, then in such a case, the whole paternal estate should be divided into two parts, and one such part be subdivided into four, and the quarter share being given to the girl, the residue, shall be taken by the son. When, however, there are two sons and one daughter, the whole of the paternal estate should be divided

1. (1) Applying this text, among others, the Calcutta High Court held in *Churaman Sahu vs Gopi Sahu* 37 Cal. 1, that "it was competent to a Hindu widow governed by the Mitākṣharâ Law to make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of the daughter's gavana ceremony (at which the marriage of the daughter would be completed and consummated) and that such a gift was binding on the reversionary heirs of her husband."

Recently the Bombay High Court held in the Full Bench Case of *Vyasacharya vs Venkubai* 37 Bom. 251 at page 263 that this text did not justify the settlement of immovable property by an adopting widow in favour of her daughter attaining majority and assented to by the natural father of the adopted boy at the time of adoption.

into three parts, and one such part be sub-divided into four, and the quarter having been given to the daughter, the remainder shall be shared by the two sons. If, however, there be one son and two daughters, the father's property should be divided into thirds, and<sup>1</sup> one (of these) shares be severally sub-divided into quarters, and having given two (quarter) shares to the two daughters, the son shall take the entire residue. Thus should be applied the rule in the case of brothers and sisters of a like caste whether of an even or uneven number.

(8) When, however, there is one son of a *Brāhmaṇ* wife, and one daughter of a *Kṣatriyā* wife, then the paternal estate should be divided into seven parts, and the parts which would be assignable to the son of a *Kṣatriyā* wife should be divided into four parts, and having given such a fourth part to the daughter of a *Kṣatriyā* wife, the residue, the son of the *Brāhmaṇ* shall take. Or, if there be two sons of a *Brāhmaṇ* wife, and one daughter by a *Kṣatriyā* wife, the father's estate shall be divided into eleven parts, and from these, the three parts which would be assignable to a son by a *Kṣatriyā* wife should be divided into quarters, and having given such fourth part to the daughter of the *Kṣatriyā* wife, the entire residue, the two sons of the *Brāhmaṇ* wife shall equally divide and take. Thus the mode of distribution should be inferred in all cases of even or uneven number of brothers and sisters of different castes.

(9) Nor is it right to interpret the text: "by giving the fourth part of his own share &c." as signifying giving money, sufficient for her marriage, by considering the word 'fourth' as having no special significance, as this would contradict the text of *Manu*<sup>3</sup>: "To the Maiden sisters, let the brothers give (portions) out of their own allotments respectively, each out of his own share a fourth part; those who refuse to give, shall become degraded." (10) The sense of this passage is as follows: Brothers of the *Brāhmaṇa* and other tribes should give to their sisters of the *Brāhmaṇa* and other tribes respectively portions out of their own allotments as prescribed (for them)

1 Mr. Colebrooke has—"and two shares severally sub-divided into quarters." As, however, the quantity of the distributive share allotted comes to be the same as given here, this variation in the reading does not make any difference.

2. अविवक्षया-विवक्षा is वक्तुमिच्छा—meaning, intention, purpose—It always signifies—a particular purpose. This is explained in Sanskrit by the significant word शक्ति: "power or force."

3. Ch. IX.—118.



having regard to their tribe—i. e., under the text<sup>1</sup> to be mentioned subsequently viz. “a *Brâhmaṇa* should take four shares” &c., and should give to each a quarter out of their respective allotments. And it is not meant that a quarter should be given by deducting it from one’s own share; but that to each maiden should be given severally 5 the quarter of a share ordained for (a son of) that particular class. The mode of adjusting the division when the castes are dissimilar, as also when the number is uneven, has already been stated. And the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin in the text<sup>2</sup>: “Those who 10 “refuse to give shall become degraded.”

(11) If it be alleged, that here also, the mention of a quarter has no special significance, and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be expressed; the answer is, no; there is no support 15 for the assertion that the allotment of a quarter of a share has no special significance in both<sup>3</sup> the *Smṛtis*; and, moreover, the withholding of it is pronounced to be a sin.

The answer.

(12) As for what is objected by some, “that a sister who has “many brothers would be greatly enriched if 20 “(it be understood that) the (text prescribing an) “allotment of a fourth share were positively meant, “and that a brother having many sisters would be entirely deprived of “wealth,” such a conclusion already stands obviated by what has been said before. It is not here directed that a quarter shall be deducted 25 of the brother’s own share and given to his sister, whence any such consequence should arise. (13) Hence, the interpretation of *Medhâtithi*, *Asahâya*<sup>4</sup> as well as of other writers is square and accurate, and not that of *Bhâruchi*. (14) Therefore, after the death of the father, a maiden is also entitled to a share. But if it be before, she obtains that 30 only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

1. Yājñavalkya II. 125 p. 1033 2. Of XI. Manu 118. 3. i. e. in text of Yājñavalkya & Manu.

4. Here there is a mistake in the print at p. 84. l. 27 for असत्सहाय read असहाय. Colebrooke translates असहाय as ‘who has no compeer’. The Commentator of that name, however, is well known.



## Vīramitrodaya

In regard to a partition after the death of the father, the Author states another special rule

## Yājñavalkya, Verse 124

5 The brothers for whom the sacraments of initiation, marriage &c. have not been performed, should have the sacraments performed by the brothers on whom the rites have been performed.

10 *Bhagmīyāscha*, 'the sisters also', *nijāt*, 'of one's own', *āṇsat* 'from the share', of the son in accordance to his share, *datwā*, 'by giving', a share, *sanskāryā*, 'should have the sacrament performed on them.' By the first use of the word *tu*, 'however', is excluded any limitation as to the quantity of wealth for a ceremony, and by its use the second time, (is excluded) its absence.

15 If the fourth of a share is not sufficient for the performance of the marriage ceremony of a sister, whatever is necessary for the marriage, so much wealth should be contributed by all in proportion to the property. "Of the unmarried damsels, they should perform the "ceremony (of marriage) according to the wealth," vide this text of *Viṣṇu*,<sup>1</sup> which has been included by the Author (124).

20

## Sūlapāṇi

## Yājñavalkya, Verse 124

25 *Pūrvāsanskṛtāḥ*, 'By the brothers of whom the sacraments had been performed', *piturārdhvam*, 'after the (death of the) father', from the parental wealth also, 'the *uninitiated*' *asanskṛtāḥ*, brothers, should have performed for them the rites such as the *jātakarma* and the rest.

30 *Bhaginyopi*, 'The sisters also', by giving a fourth part from one's own (share of the) property, with (the use of) that wealth itself, should have the ceremony of marriage performed for them. *Brhaspati*<sup>1</sup> (in the text) "Their mothers shall get an equal share, and the daughters, the fourth of "a share", has stated a fourth of a share of the paternal estate, that also has been stated as for the purpose of a ceremony.

35 When, however, a marriage is not possible with a fourth of a share. *Devala* says: "To the daughters also should be given wealth for their "marriage; of a son-less man, however, the daughter born according to "the law of the *Āryas*, shall take the wealth like a son." 'According to one's own wealth', so says *Viṣṇu*<sup>2</sup>: "Of the unmarried daughters, the "ceremony should be performed according to the (magnitude of the) wealth" (124).

[ Colebrooke Sect. VIII. ]

[ Shares of sons belonging to different tribes. ]

(1) In this manner by the text<sup>1</sup> "If the father make a distribution &c." the mode of adjustment of a distribution among brothers of equal caste, whether made with each other or with their father, has been pronounced. The Author now describes the ( mode of ) partition among brethren dissimilar in class

Yājñavalkya, Verse 125.

\* PAGE 85.

The sons of a *Brāhmaṇa* ( in the several tribes or *varṇas* ) have four shares, or three, or two, or one respectively according to the tribe ( or *varṇas* ) ; the children of a *Kṣatriya*<sup>2</sup> have three portions, or two, or one, and those of a *Vaiśya*<sup>3</sup> take two parts or one.<sup>4</sup>

Mitākṣharā:—(2) Under the text<sup>4</sup> "Three ( wives ) respectively according to the tribe of each &c." it has been pointed out that a *Brāhmaṇa* may have four wives, a *Kṣatriya* three, a *Vaiśya* two, and a *Sūdra* one. In such cases, ( the expression ) *Brāhmaṇātmaajāḥ*, the sons of a *Brāhmaṇa*, means the sons begotten by a *Brāhmaṇa*.

(3) *Varnaśaḥ*, according to the tribes or *varṇas* of each. By the word *varṇa* are indicated women of the different classes such as the *Brāhmaṇa*, and others.

The termination *S'as* (शस्), subjoined to a noun in the singular number and locative<sup>5</sup> (or other) case bears a distributive sense conformably with the grammatical rule<sup>6</sup> *viz.*

"The affix *śas* (शस्) comes optionally after crude forms denoting numbers and words denoting units of a coin in the singular number, when a distributive sense is to be expressed and the word is a *Kāraka*"<sup>5</sup>

1. Of Yājñavalkya II. 114 p. 994 before. 2. *i.e.* under similar circumstances.

3. This verse is the further development of the law as to intermarriage as laid down in verse 57 of the *Āchārādhyāya*. Mr. Mandlik in a note to this passage observes:—"Marriages with women of a dissimilar class have been prohibited in this *Kālī* age" and refers to *Nirṇayasindu* III. citing a text of *Nārada* : "द्विजानामसवर्णास्तु कन्यास्तु यमस्तया" Tr. "so also the marriage of a *dviija* with a maiden of a dissimilar class." He observes in conclusion—"the text of Yājñavalkya has therefore no application now."

4. *Āchārādhyāya*, verse 57 p. 168 above.

5. अधिकरणकारक—*Kāraka* (कारक) is the relation subsisting between a noun and a verb in a sentence, or between a noun and other words governing it. There are six such *Kārakas* belonging to the first seven cases excepting the genitive, *viz.*, (1) कर्तृ (2) कर्मन् (3) करण (4) संप्रदान, (5) अपादान and (6) अधिकरण ( for the locative. ).

6. — "संख्यैकवचनाच्च वीप्सायाम्" — *Pāṇini* 5-4-43. संख्या = words denoting numbers — that by which the sense of unit is expressed.

And hence, sons begotten by a *Brâhmana* (on women) in the several tribes, *shall respectively have four shares, or three, or two, or one, chatustridwyekabhâgâḥ syuh*, i.e. they shall be entitled to such shares.

(4) The meaning here expressed is this: The sons begotten by a *Brâhmana* on a *Brâhmanî* take four shares apiece<sup>1</sup>; similarly those begotten by him on a *Kṣatriyâ* receive three shares each; on a *Vaiśyâ*, two each; and on a *S'ûdrâ* one each.

(5) *Kṣhatrajâḥ*, the children of a *Kṣatriya*, i.e. begotten by a *Kṣatriya* on women of the several tribes — for that is here understood, — *tridwyekabhâgâḥ yathâkramam*, have three shares, two, and one respectively, in the order of their tribe i.e. the sons begotten by a *Kṣatriya* upon a *Kṣatriyâ* take three shares each, upon a *Vaiśyâ* two each, and upon a *S'ûdrâ* one each. (6) *Vidjâḥ*, those of a *Vaiśya*, i.e. begotten by a *Vaiśya* — for here again the expression *Varṇasâḥ* (respectively in the order of their tribes) is understood — have, respectively, two shares or one in the order of their tribes, i. e. those begotten by a *Vaiśya* upon a *Vaiśyâ*, take two shares apiece, and upon a *S'ûdrâ*, one each. (7) Since for a *S'ûdra* one wife only is allowed<sup>2</sup> to him, he cannot have sons of a different class from his own, partition among his sons takes place in the same manner as has been mentioned before.

(8) Although, the expression “shall have four shares, or three, “or two, or one” has been used without any restriction, still, it must be understood to relate to (property) other than land obtained by the acceptance of a gift. For it is declared<sup>3</sup>: “Land obtained by “acceptance of donation, must not be given to the son of a *Kṣatriyâ* “or other wife of inferior tribe; even though their father give it to “them, the son of a *Brâhmanî* may resume it when his father is dead.”

1. The meaning here expressed may be thus illustrated: Suppose a *Brâhmana* dies leaving behind him four sons born of wives of each class respectively. Then his estate should be divided into 10 shares out of which

4	should be given to the son by the <i>Brâhmanî</i> wife.
3	” ” ” ” <i>Kṣatriyâ</i> ”
2	” ” ” ” <i>Vaiśyâ</i> ”
1	” ” ” ” <i>S'ûdrâ</i> ” and so on.

2. Manu III. 13. The text is शुद्रैव भार्या शुद्रस्य. — “A *S'ûdra* woman only must be the wife of a *S'ûdra* man.”

3. By *Bṛhaspati*, Ch. XXV. 30. *Bâlambhatti*.

(9) Since 'acceptance of donation' is here expressly stated, land obtained by purchase or similar means appertains also to the sons born of a *Kṣhatriyâ* or other inferior women. For the son by a *Sûdrâ* woman is specially prohibited<sup>1</sup> (in the text): "The son begotten on a *S'ûdrâ* woman by any man of a twice-born class, is not entitled to a share of land."<sup>2</sup> (10) Now, if land acquired by purchase and similar means did not belong to the sons of a *Kṣhatriyâ* or *Vaiśyâ* wife, the special exception of a son by a *S'ûdrâ* woman would not be pertinent. (11) As for the text<sup>3</sup>: "The son of a *Brâhmana*, *Kṣhatriya*, or *Vaiśya*, by a *S'udrâ* wife is not entitled to a share in the inheritance; whatever his father may give him, let that be his property"—that too relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *S'ûdrâ* woman. When, however, no affectionate gift has been bestowed (on him by his father), he participates for a single share.<sup>4</sup> Thus there is nothing contradictory.

#### Vîramitrodaya

Now the Author mentions the shares of the brothers of different classes

#### Yājñavalkya, Verse 125

Of a *Brâhmana* the four sons born respectively of his four wives viz. a *Brâhmani* and the rest *chatusṭridwyekabhâgabhâjo*, 'become entitled to four, three, two and one share (respectively)'. Of a *Kṣhatriya* the three sons born of his three wives viz. the *Kṣhatriyâ* and the rest, respectively are entitled to three, two, and one share. Of a *Vaiśya*, however, the sons born of a *Vaiśyâ* and a *Sûdrâ* wife are entitled to two and one share respectively; this is the meaning.

This, moreover, is in regard to property other than land received by the acceptance of a donation, vide the text<sup>5</sup>: "Land obtained by acceptance of a gift must never be given to the son of a *Kṣhatriyâ*, or other (wife); even though their father may have given it to them, the son of a *Brâhmani* may resume it after the death of the father."

1. प्रतिषेध— is a prohibition and not a mere exception by omission.

2. This also is a text of *Brhaspati* Ch. XXV. 32—see Bâlamabhāṭṭi p. 160. 1. 20 & Dâyaabhāga Ch. 9. p. 22.

3. Of Manu. IX. 155.

4. Colebrooke adds in bracket (of the movables). 5. Of *Brhaspati* XXV. 30

- As to the son of a Śūdrā wife, what has been stated in the rule as to one share for him, that applies in the case where he does not get what was given to him through affection by the father while living. Otherwise however, "The son of a Brāhmaṇa, Kṣatriya, or Vaiśya by a Śūdrā
- 5 "wife is not entitled to a share in the inheritance; whatever his father
- "may give him, let that be his property." According to this text,<sup>1</sup> it should be understood that he is entitled to a share (125).

### Śūlapāṇi

#### Yājñavalkya, Verse 125

- 10 The sons procreated by a Brāhmaṇa, upon his four wives such as a Brāhmaṇi and the rest, shall take four, three, two and one shares respectively from the property after dividing it into ten parts. Those born to a Kṣatriya upon his three wives, such as the Kṣatriyā and the rest, shall take three, two, and one respectively. This has an application
- 15 in regard to the married wives (125).

#### [Colebrooke Sect. IX.]

✓ [Distribution of effects discovered after partition.]

- (1) Something is here added respecting the residue after a general distribution of the estate. The Author directs the distribution
- 20 of property withheld by fraud of brothers &c.

#### Yājñavalkya, Verse 126.

Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares; this is a settled rule.

- 25 (2) Mitākṣharā :—*Effects, drawyam, i.e.* the common property such as had been withheld by co-parceners from each other, and was also not known at the time of the general distribution of the estate, and *vibhakte yaddṛsyate, such as have been discovered after the partition, of the patrimony, tatsamaiḥ amśaiḥ vibhajeran, let them divide that in equal shares; iti sthitiḥ, this thus is the settled rule, i.e.* the rule of the law.
- 30

(3) Here, by saying 'in equal shares', a partition with deductions has been forbidden. By saying 'let them divide,' it has been pointed out that the property is not to be taken exclusively alone by

the person by whom it was discovered. (4) Thus, since the text is thus significant, it does not imply that no offence is committed by embezzling the common property.

(5) But (it is urged) **Manu** has indicated an offence only in the eldest, if he appropriate to himself the common property, and not so on the part of the younger brothers? *Vide* the text<sup>1</sup>: “An eldest brother who from avarice “shall defraud his younger brothers, shall no longer be honoured as the “eldest, shall be deprived of his additional share, and be punished by the kings.”

(6) (To this) The answer is, it is not so. For by pronouncing such conduct criminal in the case (even) of an elder brother, who is admittedly independent and is in a quasi-parental position, it is more assuredly shown—under the rule in the maxim<sup>2</sup> of ‘the loaf and the staff’—to be (much more) criminal in the younger brothers, who are subject to the control of the eldest, and are held in tutelage as sons. And moreover, such conduct has been declared to be an offence without exception in the *Śruti*<sup>3</sup>: “Him, indeed, who “deprives an heir of his right share, he does certainly destroy; or, if “he destroy not him, he destroys his son, or else his grandson.”

(7) He who deprives an heir *i.e.* a person entitled to a share *i.e.* debars or excludes him from a share *i. e.* does not yield to him his proper

1. Chapter IX. 213, read in the text “सोऽज्येष्ठः”.

2. दण्डादृष्टिकन्याय, —is the maxim of ‘the loaf and the staff’ or ‘the stick and the cakes’. See note, on page 86 orig. Sanskrit—If a number of cakes are attached to a staff or stick and the stick is carried off, or eaten by mice, it need not be expressly stated that the cakes have had the same fate—it is an inference which necessarily follows. This rule is the same as the *a fortiori* reasoning of the West.

3. This is the quotation from the *Aitareya Brâhmana* II. (VI-7) in connection with that portion of the Soma sacrifice which deals with the animal sacrifice. The passage occurs in a discussion whether the Rākṣhasas should have a portion at the sacrifice, one side suggesting that they should not be mentioned and must not have a share, and the other side asserting that they *should* be mentioned, and as a reason in support of it is the text in the passage which in substance means that ‘an unjustifiable deprivation of another’s dues operates by reaction in his own life-time or in the generations following. (See *Ānandâśrama* Series No. 32 Part I page 172. The discussion begins at p. 170; see also *Sâyana’s* Commentary).

allotment, such a one who is thus debarred of his share, destroys or annihilates *i. e.* renders a criminal that person who so debars him of his right; or, if he do not immediately destroy him, he destroys his son or his grandson. (8) It is (thus) pronounced to be criminal  
5 in any person without any distinction as to the eldest (or youngest &c.) to withhold common property.

(9) If it is argued that blame is not incurred by one who takes the goods, thinking them (to be) his own, under the  
An objection. notion that the common property also becomes his

10 property and appertains also to him (individually). (10) The answer is, that is wrong. For, though he took it thinking it (to be) his own, still

The answer. he has taken the property of another person, contrary to the injunction which forbids his so doing, and thus he certainly does incur blame. (11) As<sup>1</sup>, in answer to a

15 proposed solution of a difficulty, "If an oblation of green kidney "beans be not procurable," and black kidney beans be used in their stead by reason of the resemblance, the prohibition contained in the rule *viz.* "black kidney beans are not fit to be used in sacrifices" does not apply, since they were used by mistake for ground particles of  
20 green kidney beans, it is on the contrary maintained, as the right opinion, that, "while the ground particles of green kidney beans be "taken, the ground particles of black kidney beans are also actually "employed as being unforbidden and the prohibitory command is "consequently applicable in this case (by inference)." (12) Therefore  
25 it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property. ✓

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1 The argument of the objector and the reply to it is sufficiently apparent from the text itself. According to the fixed rules of interpretation सद्दृश्य-resemblance is also a part *i. e.* अवयव of the thing itself. And the meaning here is that माष (the black kidney beans) having been prohibited generally, the prohibition extends to their सद्दृश्य also—which is a part of the *Māṣa* itself and therefore, although mixed with other sorts, have to be avoided, and for this reason they must not be used as a substitute for the green ones. (See also Bāṣambhaṭṭi p. 162 & Subodhini p. 56).



Vîramitrodaya

Thus even when a partition has taken place of the common stock everywhere, if any property has been taken away by any one, in regard to that property no special right accrues to him individually, as a distribution of that portion has not taken place; and so a fresh partition must be made of that property; so the Author says 5

Yājñavalkya, Verse 126

*Samaiḥ*, 'in equal', i. e., equal to the share in the partition which had taken place before. The rest is clear. (126).

Śûlapâṇi

10

The Author mentions about a lapsed share.

Yājñavalkya, Verse 126

What was kept concealed at the time of the partition, but was discovered afterwards, that should be made (into) equal (parts) and distributed. The meaning is that an additional share &c. should not be given to the eldest. This also holds in the case of a debt, so says *Manu*<sup>1</sup>: "If after all the debts and assets have been duly distributed according to the rule, any property be discovered afterwards, one must divide all that equally" (126). 15

[ Colebrooke Sect. X. ]

20

[ Rights of the *Dwyâmuṣhyâyana*<sup>2</sup> or son of two fathers. ]

(1) Intending to propound a special allotment for the *Dwyâmuṣhyâyana* (or son of two fathers), the Author describes the nature of that relation:—

Yājñavalkya, Verse 127.

25

By one who has no male issue, a son begotten on the soil of another man, under a legal appointment to both also, is such a one lawfully heir, and giver of funeral oblations.

1. Ch. ix. 218.

2. "As here described, the *Dwyâmuṣhyâyana* is restricted to one description of son viz. the *Kṣhetraja* or "son begotten on the wife"; but the term is applicable to any adopted son retaining his filial relation to his natural father along with his acquired relation to his adoptive father." Colebrooke. See also *Bassava vs. Lingangaada* 19. Bom. 428 at pp. 454 and 472 (a case of Lingayats—based on custom), & *Mayne's Hindu Law* p. 173.



**Mitākṣharâ:**—(2) Under the rule of the law contained in the text<sup>1</sup>,  
 “To a sonless widow, one commanded by the *Guru* &c.”, **aputrena**, by  
 one who has no male issue, i. e. by the husband’s brother or the like,  
**parakṣhetre**, on the soil of another, i. e. on the wife of another, **niyogotp-**  
 5 **âditaḥ**, son begotten under a legal appointment, from venerable persons,  
**ubhayoḥ**, to both, i. e. the owner of the seed as well as that of the soil,  
 he is **rikthi**, heir, i. e. successor to their estates and, **pinḍadâtâ**, giver of  
 funeral oblations, **dharmataḥ**, according to law.

(3) The meaning of this is as follows : When the person who is  
 10 duly appointed, such as the husband’s brother, or other person, and  
 being even himself destitute of a male issue, proceeds to an intercourse  
 with the wife of a childless man, for the sake of raising issue both to  
 himself and for the other, the son, whom he so begets, is the child of  
 15 two fathers and denominated *Dvyâmuṣhyâyana*. He is heir to both,  
 and offers funeral oblations to both (after their death). (4) When  
 however, the person appointed, has male issue, and has intercourse  
 with the wife for the sake of raising up issue to her husband only, the  
 child so begotten by him, is the son of the owner<sup>2</sup> of the wife, and  
 20 not of the<sup>3</sup> owner of the seed. And, such a one, by this restriction,  
 is not heir of the owner of the seed, nor is he qualified to present  
 funeral oblations to him, as has been so declared by **Manu**<sup>4</sup>; “Where by  
 “a special compact a field is made over (to another) for (the sowing of)  
 “the seed, then the owner of the seed as well as of the field are both  
 “considered, in this world, as joint sharers of it (i. e. of the crop).”  
 25 (5) *By special compact. viz*, when the field is delivered by the owner  
 of the soil to the owner of the seed, on an agreement in this form :  
 “Let the child which will be here produced, belong to us both,” then  
 of the child begotten in that soil the owners of both the seed and the  
 soil are considered by the mighty sages as joint sharers. (6) So<sup>5</sup>:  
 30 “If there be no special agreement with respect to the crop between  
 “the owner of the field and the owner of the seed, the benefit clearly

1. i. e. of *Yājñavalkya* in *Āchârâdhyâya* 68-70 p. 187 above in which the husband’s brother, a sapinda, or a sagotra have been allowed to raise issue on the sonless widow of their deceased relative, and such a son is called the *Kṣhetraja* son.

2. i. e. of the wife’s husband by marriage. *Kṣhetra* (land) here means wife.

3. i. e. procreator.

4. Ch. IX-53.

5. *Manu* Ch. IX-52.

belongs to the owner of the field; for "the receptacle is more important than the seed." (7) "If there be no special agreement with respect to the crop"; i. e. with a special agreement viz. "Let the child begotten here belong to us both", whichever child is begotten on another's ground, that child verily is of the owner of the soil; for the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

\* PAGE 87.

(8) Even here, however, the appointment<sup>1</sup> for raising up issue is only in relation to a woman who had been betrothed, since any other such appointment is forbidden by Manu.<sup>2</sup> For, after premising an appointment thus: "From a brother-in-law or from a *Sapinda* (by means of cohabitation with him) by a woman who has been duly authorised, the desired offspring may be secured, on failure of issue. The person, however, so appointed to raise issue on the widow, shall at night, annointed with clarified butter, and silent, beget one son (only), but never a second in any case." Manu<sup>3</sup> has himself prohibited this practice: "By regenerate men, a widow must not be authorized to conceive by any other; for any, who authorize her to conceive by another, violate the primeval law. The raising of an issue by appointment is nowhere mentioned in the *mantras*<sup>4</sup> regarding marriage, nor is the re-marriage of widows mentioned in the rules concerning marriage. This practice which is reprehended by the larned *Dvijās* as fit, only for beasts, is referred to even in connection with men, while King Veṇa held sovereign sway. He possessing the whole earth, and therefore eminent among<sup>5</sup> saintly Kings, formerly brought about a confusion of tribes when his intellect was infatuated

1. For Colebrooke translates "Commission"—See Bālabhāṭṭi p. p. 166-168, where a dissent from this doctrine is noted and passages are cited showing that a father is free to dispose of his girl, if after troth verbally plighted, the husband die before the actual celebration of the marriage. In such a case she remains a damsel (*Kanyā*) and may be disposed of by her father.

2. Ch. IX-59-60.

3. Ch. IX-64-68.

4. i. e. hymns from the *Veda* bearing on, or chanted at, nuptial rites.

5. A *Rājārṣhi* is a king who has all the characteristics of a saint. The compound is solved in Sanskrit to indicate "that he is a king-as well-as a saint."

“by lust. Since that time, whoever, through folly, appoints a woman whose husband is dead, to have intercourse for the sake of progeny, sages censure such a one.”

- (9) Nor is an option<sup>1</sup> to be inferred from the contrast of precept and prohibition, since they, who authorize the practice of appointment, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women, while continence is much praised. As says **Manu**<sup>2</sup>: “Better that she (the faithful wife) emaciate her body by living voluntarily on pure flowers, roots, and fruit; but let her not when her lord is deceased, even pronounce the name of another man”—By this text, having prohibited recourse to another man for the sake of maintenance, **Manu**<sup>3</sup> interdicts the recourse to another man, even for the sake of progeny thus: “Let her, until death, continue patient (of all injuries), self-controlled and continent, and maintain before her vision that most incomparable rule of virtue, followed by women<sup>4</sup> devoted to one husband only. Many thousands of Brāhmanas, having avoided sensuality from their early youth, have gone to heaven (even) without continuing their race. And like those Brāhmachâris<sup>5</sup> a virtuous wife, who, after the death of her husband settles herself in a uniform continent life, ascends to heaven, even though she has no son. But a woman who from a desire to have offspring violates her duty towards her (deceased) husband, brings on herself disgrace in this world and loses her place (with her husband) in the next world.” Therefore it is not

1. Mark the gloss of *Medhâtithi* on this verse. He says that union with another man bad, but emaciating the body is also bad. The text of Manu: “Better that she emaciate the body &c.” has an implied censure also for the emaciation of the body. It only means that between the two evils the evil of emaciating the body may be preferred. “कामशब्दप्रयोगोऽरुचिसंस्त्वचनार्थम् । देहक्षपणमप्यकार्यम् । इदं त्वन्यदकार्यतरं यदन्येन पुरुषेण संप्रयोगः” ।

2. Ch. V. 157.

3. Ch. V. 158-161.

4. एकः पतिरित्याः सा एकपत्नी—vide the rule of Gr. ‘नित्यं सपत्न्यादिषु’ (4-1-35). “In forming the feminine with the affix डीप् (ई), the word पति always takes the substitute न् in the words like ‘सपत्नी’ and the rest.”

5. i. e. persons taking a lifelong vow of celibacy and living accordingly.

right to deduce an option<sup>1</sup> from the injunctions of affirmation and prohibition.

(10) Thus *Niyoga*<sup>2</sup> having been prohibited in the case of a wife sanctified by marriage, what then is a *Niyoga* sanctioned by law? so the (same<sup>3</sup>) author says: "The damsel, whose husband shall die "after troth verbally plighted, the brother of the husband may take<sup>4</sup> "her according to the following rule: having espoused her in due "form, she being clad in white garments, and pure in her conduct, "let him privately approach her once in each proper season<sup>5</sup>, until "issue be had."

(11) It appears from this very passage, that he, to whom a damsel was verbally given, is her husband even without a formal acceptance on his part. If he die, his own uterine brother, whether elder or younger, shall take her, *i. e.* marry her. "In due form" *i. e.* as directed by the *S'āstras*; "having espoused her" *i. e.* wedded her, and according to the following rule, namely the rule directing the besmearing of the body with clarified butter, and the restraint in speech &c.—let him "privately" *i. e.* in secret, approach her, clad in a white robe, "and pure in her conduct" *i. e.* having a restraint on her mind, speech and gesture, once at each menstruation, until conception. (12) Such a marriage is nominal<sup>6</sup>, and a mere part of the

1. According to the rule of interpretation विरोधे तु विकल्पः, "when there are two contradictory texts, an option is inferred." So the Author says that no case for inferring an option arises on the ground that there are two injunctions of a contradictory character *viz.* one of affirmation and another of negation. An option (विकल्प) would arise if the two injunctions were of an equal character (तुल्यार्थस्तु विकल्पेन). But here, while a censure is passed upon those who authorize such a practice, none such is to be found in reference to those who forbid it. The *Vidhi* (*i. e.* the affirmative injunction) and the *Nishedha* (*i. e.* the injunction of a negative character) are therefore not equal, and therefore an option cannot be inferred (See *Bālam-bhaṭṭi* p. 165, ll. 6-10. Subodhini. Tr. p. 57, ll. 15-20.).

2. *Niyoga*—is raising issue on the wife of a deceased person. See. Yājñ. 1. 68-69. p. 187 Note 1 on page 1040. 3. *i. e.* Manu Ch. IX. 69-70.

4. विन्देत्—"know her."

5. *i. e.* at each menstruation period.

6. The meaning is:—that as the injunctions as to clarified butter and other observances are prescribed as mere forms in approaching an authorized widow, so these espousals are a mere part of that intercourse, and not a principal and substantive part, whence a regular marriage between the parties might be inferred. See Colebrooke citing *Bālam-bhaṭṭi* p. 167 & Subodhini p. 57, ll. 23-25.

form in which an authorized widow shall be approached, like the injunction of clarified butter &c. It does not make her the wedded wife of her brother-in-law. (13) Therefore, the issue thus begotten belongs to the husband of the wife<sup>1</sup> and not to the brother-in-law. By special agreement, however, the issue may belong even to both.

### Vîramitrodaya

Among the sons of the same *varṇa* or of different *varṇas*, of twelve sorts such as the *Aurasa* and other sons, the Author mentions a partition among themselves, and in some cases a non-division, but coupled with ( a right to ) maintenance

### Yājñavalkya, Verse 127

*Parakṣhetre*, 'on the soil of another', *aputrena*, 'by one who has no male issue', by the husband's brother, or by one of a different *gotra*, *niyogena*, 'under an appointment', by the elders, a son *utpâtitaḥ*, 'begotten', *ubhayorapi*, 'of both even', *i. e.* of the owner of the seed and of the land also, becomes the heir entitled to take the entire heritage, and *piṇḍadâtâ*, 'the giver of funeral oblations' also; *dharmataḥ*, 'under the law', *i. e.* in accordance with the provisions of law.

If to the owner of the seed, or to the owner of the soil, afterwards an *aurasa* son be born of another wife, ( then ) according to the **Brahmapurâṇa** : " *The Kṣhetraja* son takes three parts, and *Putrikâsuta* "the fourth part." This is the meaning of the word *cha*, 'also'. By the word *api*, 'also', is included the father by the seed, and of the soil. (127).

### Śûlapâṇi

### Yājñavalkya, Verse 127

*Niyoga* 'appointment such as 'annointed' with clarified butter &c.,' *Aputrena* 'by one who has no male issue'; upon the wife of another, *niyogotpâtitaḥ* 'begotten under a legal appointment'; *ubhayor*, 'of both,' he is entitled to perform the funeral ceremony, as well as to take the estate. This is to be with the consent of both, so says Nârada<sup>2</sup>: "With the consent of the owner of the land he whose seed is sown in the land; the issue of that is considered to be of both, of the owner of the seed and "of the soil " ( 127 ).

1. Lit. Tr. "owner of the soil" क्षेत्रस्वामिन् *i. e.* to the man who was her husband by marriage.

2. Ch. XII. 58

[ Colebrooke Sect. XI. ]

[ Sons by birth and adoption. ]

(1) A distribution of shares among sons, equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the Author first describes their characteristics:—

Yājñavalkya, Verses 128-132, 133 (1).

The *Aurasa*, i. e. 'legitimate son' is he who is procreated on a lawfully wedded wife; equal to him is 'the son of an appointed<sup>1</sup> daughter', *Putrikā-sutah*. *Kṣhetraja* is 'one begotten on a wife<sup>2</sup> by a *sagotra* relation of her husband or by another (128).

One secretly produced in the house is known as *Gādha*, 'a secretly born son.' A 'damsel's child', *Kāmina*, is one born of an unmarried daughter and is considered as the son of the maternal grand-father (129).

A child born of a woman whose marriage had or had not been consummated, is called 'the son of a re-married woman', *Pāunarbhavaḥ*. He, whom his mother or father may give (in adoption) shall be considered as 'the adopted son', *Dattaka*.

(130) 'A son bought,' *Kṛita* is one sold by them. 'A son made by himself,' *Kṛtrima* is one adopted by the man himself. One who gives himself is 'a son self-given' *Svayamdatta*. One who was (along with his mother) accepted in marriage while he was in the womb is called 'a son received with the bride' *Sahodhaja*.

(131) He, who, having been deserted (by his parents) is taken (for adoption) is 'a deserted son' *Apaviddha*, [ 131 (1) ].

Mitākṣharā:—(2) The issue of the breast (*uras*) is an *Aurasa* i. e. the legitimate son. Such a one, moreover, *dharmapatnijah* is one, *born of a lawfully wedded wife*<sup>2</sup>. A woman of equal tribe, espoused in lawful wedlock, is "a legally wedded wife,"—and a son begotten on her is a true and legitimate son, and is<sup>3</sup> chief in rank. (3) *Tatsamaḥ putrikā-*

1. i. e. a daughter appointed to raise issue under the contract mentioned by *Vasishṭha* (XVII. 17)—see further on p. 1046 ll. 4-6.

2. *Wife* i. e. of the person with whom she was lawfully wedded.

3. This passage means that such a son would have preference when there is a competition between him and other kinds of sons, and not that other kinds of sons are not heirs at all. See *Vīramitrodaya* Ch. II. Part II. 2.

And according to *Madana-Pārijāta* the sons born of lawfully wedded wives although of different tribes are all legitimate. See also *Bālabhāṭṭi* p. 169.

These passages were referred to in *Minakshi vs Rāmānanda* 11 Mad. 49 at p. 52 and *Tulshi Ram vs Behari Lal* 12 All. at p. 250.



sutah, equal to him is the son of an appointed daughter. 'Equal to him i. e. equal to the legitimate son.' The son (born) of a daughter (appointed) is a *Putrikā-suta*. And accordingly he is equal to a legitimate son. As has been said by **Vasiṣṭha**<sup>1</sup>: "This damsel who  
 5 "has no brother, I will give unto thee, decked with ornaments; (so "that) the son who may be born of her shall be my son." Or that term may mean a daughter regarded as a son by reason of the fact that the daughter herself is to be regarded as a son. All the same such a one is also similar to a legitimate son, as she has more of the parti-  
 10 cles of the mother's body and less of the father's. As says **Vasiṣṭha**<sup>2</sup>: "The second is an appointed daughter herself." The meaning is that the second (kind of) son is the appointed daughter<sup>3</sup> herself. (4) The son of two fathers (*Dvyaṁuṣhyāyana*) is inferior to the natural father's legitimate son, because he is produced in another's soil,  
 15 (5) *Kṣhetrajah kṣhetrajāstasugotrena wā*, the *Kṣhetraja* is one begotten on a

1. Ch. XVII. 17.

2 Ch. XVII. 15—The reading in the *Vasiṣṭha Sūtra* is (third) तृतीयः and not (second) द्वितीयः.

3. The *putrikā-putra* is of four descriptions. (1) The first is the daughter appointed to be a son. (see *Vasiṣṭha* XVII. 15 पुत्रिकेति). (2) The next is her son. He is called "the son of an appointed daughter", without any special contract. He is, however, to be distinguished from the next i. e. the third class. He is not in the place of a son, but in the place of a son's son and is a *daughter's son*. Accordingly he is described as a *daughter's son* in the text of *Śaṅkha* and *Likhita*: "An appointed daughter is like unto a son, as *Prâchetasa* has declared: her offspring is termed a son of an appointed daughter: he offers funeral oblations to the maternal grand-fathers and to the paternal grandsires. There is no difference between a son's son and a daughter's son in respect of benefits conferred." (3) The description of a son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation as stated by *Vasiṣṭha* XVII. 17. He appertains to his maternal grandfather as an adopted son. (4) The fourth is a child born of a daughter who was given in marriage with a stipulation in this form "the child who shall be born of her, shall perform the obsequies of both." He belongs as a son to both grandfathers. But, in the case where she was in thought selected for an appointed daughter, she is so without a compact, and merely by an act of the mind. (Manu Ch. IX 127 and 136.), *Hemâdrî* quoted in Colebrooke. See also *Thakur Jeeb Nath Singh vs Court of wards* L. R. 2 I. A. 163-166. *Rahi vs Govinda* 1 Bom. 102; and in particular *Karuppi Nachiar vs Sankara Narayana Chetti* 27 Mad. 300 at p. 312 sqq; and *Jamiyatram vs Bai Jamna* 2 Bom. H. C. Rep. 11 at p. 17.



wife by a sagotra relation of her husband or by another. By another, itareṇa, i.e. by one who is not a sapinda or by a brother of the husband is a Kṣhetraja son. (128)

(6) Gûḍhajaḥ, the secretly born son is one prachchhanna utpannaḥ, secretly produced, in the husband's house. By excluding<sup>1</sup> the case of a child begotten by a man of inferior or superior tribe this must be understood to be restricted to an instance where it is not ascertained who the father is, but it is certain that he must belong to the same tribe.

(7) Kâninaḥ, a damsel's<sup>2</sup> child, however, is a son begotten on a damsel by a man of equal class, (under the same limitations) as mentioned before; and he is the son of his maternal grandfather, provided she be unmarried and abide in her father's house. But if she be married, the child becomes the son of the husband alone. As says Manu<sup>3</sup>: "A son whom a damsel secretly bears in the house of her father is considered as the son of the husband and denominated damsel's son, as being born of an unmarried woman". (129).

(8) Paunarbhuvah, the son of a remarried woman, is the son begotten by a man of equal class on a twice-married woman; akṣhatâyâm wâ kṣhatâyâm wâ, whose marriage had or had not been consummated.

1. i. e. This clause starts with the assumption that the begetter, though unknown, is not of a dissimilar class. The only thing unknown is the particular identity of the man. For the ignorance as to the particular person must be the husband's, not of the wife, and the knowledge of his equality in tribe, may be obtained through her, for surely she must know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger, in a dark night, then the child may bear the name of Gûḍhaja, but not a Gûḍhaja son properly so called, as described before [ see Bâlabhāṭṭi p. 170. ll. 15-18 citing Madanapârijāta ]. Bâlabhāṭṭi also refers to the opinion of some according to which the child must be abandoned.

As to the status of such a son whose father is unknown, he will have the same status and domicile as that of his mother, and the same opinion is quoted by Colebrooke as being that of Vâchaspati-Misra in the Śrâddha-Chintāmaṇi.

2. See Bâlabhāṭṭi p. 170 ll. 20-24. "Damsel does not here signify unmarried only, for even with that import, the term is frequently used in the sense of one who has had no connection with a man." It signifies a woman with whom a regular marriage has not been consummated.

See also Subodhini p. 58 ll. 7-10 Tr. p. 146 ll. 12-16.

3. Ch. IX. 172.

( 9 ) He, who<sup>1</sup> is given by his mother under her husband's direction, while the husband is absent on a journey or is dead; or who is given by the father, or by both

The adopted son. ( parents ) to a person of the same class, becomes **dattakaḥ**, the adopted son, of him to whom he is given. As says **Manu**<sup>2</sup>: "He, whom his mother  
5 " or his father, in a time of distress affectionately give with (a libation  
" of) water and who is of the same class, is called a son given."

( 10 ) By specifying distress, ( it is intimated that ) the son should not be given unless there be distress. This prohibition regards the giver<sup>3</sup>. ( 11 ) So an only son must not be given, *Vide* the text of **Vasishṭha**<sup>4</sup>: " But let him not give or receive an only son " ( 12 ) Nor, though a numerous progeny exist, should an eldest son be given, since he alone is the principal among those who fulfils the office of a son as is shown by the following text<sup>5</sup>: " By the eldest son, as soon as  
10 " born, a man becomes 'the father of male issue'."

( 13 ) The mode of accepting a son for adoption is propounded by **Vasishṭha**<sup>6</sup>: "One who desires to adopt a son, shall  
Mode of acceptance. " assemble his kinsmen, announce his intention to  
" the king, make burnt-offerings in the middle of the house, reciting  
20 " the Vyāṛhtis and take ( as a son ) an un-remote  
\*PAGE 89. kinsman, just the nearest among his relatives."<sup>7</sup>

1. These passages have been referred to in a number of cases, of which the following may be noted:—*Rangubai vs. Bhagirthibai* 2 Bom. 380; *Shri Balusu Gurulinga Swami vs. Shri Balusu Ramalakshamma* 26 I. A. 113. 2. Ch. IX. 168.

3. And not the taker. See *Bâlambhatti & Subodhini* p. 58 l. 11. Tr. 146. l. 26.

4. Ch. XV. 3.

5. Of *Manu*. Ch. IX. 106.

6. Ch. XV. 6. See *Raja Makund Deb vs Sri Jagannath Jenamoni* 2 Pat.<sup>6</sup> 469 at p. 485 for essentials of adoption. It is only one who is devoid of issue, who can adopt. Thus the existence of a disqualified son is a bar to an adoption. *Bharmappa vs Ujjangauda* 46 Bom. 455. A contrary view has been taken in Madras; see *Nagammal vs Sankarappa Naidu*, 54 Mad. 576; see also *Radha vs Dinkerrao* 39 Bom. L. R. 147 at pp. 150, 151.

7. Note the following very important remarks of West and Bâhler in connection with this. ( 3rd edition pp. 884-888 ). Say the learned authors :

"The gradual abolition of grosser means of supplementing a family in favour of the system of adoption is itself a striking evidence of progress in civilization. The appointment of a daughter held an intermediate place between this and the coarse materialism of the earliest modes of substitution. It is no longer recognized, but traces of the institution still remain in the existing law. From it on the one hand has been derived the right of succession of the daughter and the daughter's son for adoption. As an imitation of a real son the adopted son ought to be born of some woman, whom the adoptive father could have

( *Contd. on next page.* )

(14) By the expression—"an un-remote kinsman"—the adoption of one very distant by country and language is forbidden.

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married. This excludes the son of a daughter, and such is the law generally received amongst the higher castes and sub-divisions of the great Śūdra class almost everywhere, and amongst some of the higher castes by their customary law, the daughter's son is deemed fit for adoption, and even the most fit on account of the place he might formerly have taken as a son by appointment, as well as of the blood connection on which the system of appointment itself was founded."

"The passage of Vasiṣṭha which directs that a man desiring to adopt shall make his selection from amongst near relatives, and for choice take the nearest, is so obscurely expressed as to admit of various interpretations. How the ingenuity of commentators has been exercised upon it may be seen in Colebrooke's note to the Mit. Chap. I Sect. 11 Para 13. The Samskāra-Kausthubha and the Nirṇaya-Sindhu, construing the direction most liberally, approve the adoption, failing a Sagotra Sapinda, of a daughter's or a sister's son. The Śāstris, following the Vyavahāra-Mayukha, are almost uniformly opposed to this, except in the case of Śūdras. They rely on the impossibility of a real paternal and filial relation between the fictitious father and a son so born; and the decisions in Bombay must be considered perhaps to have confirmed the Śāstris' view, but customary law seems in a measure at least to have been represented by the doctrine of the two works referred to. These were no doubt written under the influence of ideas which shaped the customary law, and they afford an example in their divergence from the more generally received authorities of parallel growths of doctrine springing from the same original source, yet taking quite different lines of development according to the medium in which they were placed. The real nearness of daughter's son once procured real acceptance for the doctrine of appointment, and this in its turn has facilitated the admission of the daughter's son as fit for adoption. The Śāstra had however to be interpreted accordingly, and this interpretation setting aside the ordinary doctrine of a necessary difference in the families of birth of the real mother and the adoptive father paved the way for the admission of the sister's son. In the South of India the Brahminical law was for the most part apparently accepted only with this qualification, adapting it to previously existing customs, as in the case of marriage between the children of a brother and a sister rejected by the stricter law of the North, but allowed in the South, because it could not be prevented."

On this passage observe the learned judges of the Madras High Court: "The divergence between the generally accepted authorities and actually existing customs and the survival of the customs sanctioned by the earlier law appear to be accounted for in the above passage on sound historical principles, and the conclusions therein arrived at to receive confirmation from what we find to be established by evidence in the case before us." *Vayidinada vs. Appu* 9 Mad. at p. 54.

(15) The same (ceremonial) should be extended to the case of sons bought, self-given, and made: for parity of reasoning requires it. (131).

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\*The following is the note of Mr. Colebrooke referred to in the above passage :—

“*Raghunandana*, in the *Udvāhatatva*, has quoted a passage from the *Kālikā-Purāṇa*, which, with the text of *Vasiṣṭha*, constitutes the ground-work of the law of adoption as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself is contested by some, and particularly by the author of *Vyavahāra-Mayūkha*, who observes truly that it is wanting in many copies of the *Kālikā-Purāṇa*. Others following the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not a stranger, more advanced both in age and progress of initiation. The following version of the passage conforms with the interpretation of it given by *Nanda-Paṇḍita* in the *Dattaka-Mimāṃsā*. “Sons ‘given and the rest, though sprung from the seed of another, yet being only ‘initiated (by the adopter) under his own family name, become sons (of the ‘adoptive parent). A son having been regularly initiated under the family name ‘of his (natural) father, unto the ceremony of tonsure, does not become the son ‘of another man. When indeed the ceremony of tonsure and other rites of initiation are performed (by the adopter) under his own family name, then only can ‘sons given and the rest be considered as issue: else they are termed slaves. ‘After their fifth year, O King, sons are not to be adopted. (But) having taken a ‘boy five years old, the adopter should first perform the ‘sacrifice for male issue.’”

“The *Putreṣṭi* or ‘sacrifice for male issue,’ mentioned at the close of this passage is a ceremony performed according to the instructions contained in the following text of *Īśa*: “He who is desirous of issue should offer to fire, “parent of male offspring, an oblation of kneaded rice roasted upon eight pots—herds; and to Indra, father of male offspring, a similar oblation of rice roasted “on eleven potsherds: fire grants him progeny; Indra renders it old.”

(Colebrooke).

“Nearest among his relation”—*Bandhu-Sannikṣṭam* is the expression in the text. There are also other readings variously noticed regarding this passage viz. by *Nanda Paṇḍita* in his commentary on *Viṣṇu*. “*Adûrabāṇdhavam asannikṣṭam eva*”—which gives an entirely different rule viz. “one whose kindred dwell in a country not far off, and one not connected by affinity.” *Viṇāṇesvara* himself explains the term *Adûrabāṇdhavam* in the next line by the remark that by this expression the adoption of “one very distant by country and language, is forbidden. And *Bâlamphatṭa* (page 172) after referring to the text of

- (16) **Kṛitah**, the son bought, moreover, is one who **tābhyām**, by them, i.e. by both mother and father, or by either the mother or the father, **vikṛitah**, was sold, and as before, excepting, an only son, or an eldest son, in a time of distress and belonging to the same class. As for the text of **Manu**:<sup>1</sup> viz—"He is called a son bought, whom a man, "for the sake of having issue, purchases from his father and mother: "whether the child be equal or unequal to him"—it must be interpreted, as whether like or unlike in qualities, not in class; since the Author concludes<sup>2</sup> by saying "This law is propounded by me, in regard to sons "equal by class". (17) **Kṛtrimah syāt swayamkṛtah**, the son made is one adopted by the man himself—The son made however, is the son adopted as a son himself by the man, who is desirous of male issue, and enticed by the show of money and land, and being an orphan without father and mother: for, if they be living he is subject to their control.<sup>3</sup>
- (18) **Dattātmā**, the son self-given, is one who, being bereft of father and mother, or abandoned by them, presents himself, saying "Let me become thy son." (19) **Sahodhajah**, the son received with the bride, is one who being in the womb, is accepted (in the course of the marriage) when a pregnant bride is accepted. He becomes the son of the husband. (131)
- (20) **Apavidhah**, a son deserted, is one who having been deserted, **utsṛṣṭah** by his father and mother, is taken (for adoption); **grhyate**. He is the son of the taker.

In all cases he must be of the same class (as with the adoptive father).

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**Vasiṣṭha** (XV. 7-8) remarks: "If possible—he should take a **bandhusannikṛṣṭam** i. e. — Kinsman nearly related — e. g. a brother's son or the like; on "failure of such a one he should take **adūrabāndhavam**, one whose kinsmen are not "remote, i. e. whose means of livelihood is in a near place, whose father and "other relations are near, and whose family and character are consequently "known." Mr. Colebrooke also notices the other readings viz. those given in **Kalpataṛu** and **Ratnākara** viz. "Adūre bāndhavam asannikṛṣṭameva."

1. Ch. IX. 174.

2. See further on II. 133 (1). p. 1057 l. 37.

3. The consent of both is the only requisite. No ceremonies, nor a document is necessary. *Kamla Prasad vs Murti*, 13 Pat. 550.

4. If a woman be married while pregnant, the child born of that pregnancy is a **Sahodha** son; such a one is to be distinguished from a **Kāmīna** (son of an unmarried damsel), because he is not born of a damsel. It is not clear how he can be distinguished from a **Gūdhaja**, unless a too technical construction is placed on the suffix *ja* 'born', since after the marriage he is no longer one "secretly born." Whereas the chief element of a **Gūdhaja** viz. the concealment of the individuality of the progenitor from whom the woman has conceived still remains there.

## Śûlapâṇi

## Yājñavalkya, Verse 128

- "A son begotten by oneself upon a wife married according to "sacrament, one should know him to be the *Aurasa*," under this text of  
 5 **Baudhâyana**,<sup>1</sup> one begotten by oneself upon a married wife of one's own caste is the *Aurasa* son. Equally entitled for a share like the *Aurasa*, is the *Putrikâputra*. **Manu**<sup>2</sup> describes a *putrikâ* thus : "One having no  
 "issue, may make his daughter in this manner an appointed daughter viz.  
 "The child which may be born of her, shall be one entitled to offer  
 10 "funeral rites to me."

- On the wife of another who is without an issue, and who was appointed by the elders, and under the ceremony of *Niyoga* such as the annointment with clarified butter &c., a son begotten by a *sapinda* or by one of a superior *varṇa* is (known as) the *Kṣhetraja* son. As says **Viṣṇu**.<sup>3</sup>  
 15 "Upon one who was appointed (to beget), a son begotten by a *sapinda* or "by one of a superior *varṇa* is the *kṣhetraja*, the second" (128).

## Yājñavalkya Verse 129

- In 'the house', *gṛhe*, of the husband, *prachchhanna*, 'one secretly', born, is the *Gādha* son, so declared by **Manu** and others.  
 20 Upon an unmarried daughter while residing at her father's house, one secretly begotten by a man of the same *varṇa* is the *Kānina* son, declared to be the son of the mother's father. As to what has been stated by **Manu**<sup>4</sup> viz. : "While in her father's house, the son which a daughter  
 "causes to be begotten in secret, that one should know as the *Kānina* son,  
 25 "and belonging to the husband (after marriage) as a son born of the "maiden", that has been declared by **Viśvarûpa** to be applicable when there exist the *Aurasa* and like other sons (129).

## Yājñavalkya, Verse 130

- Upon a widow who has had sexual intercourse, or one who had no  
 30 regular intercourse, and who was married again, a son born is the *Paunarbhava* son, becomes the son of the progenitor. Similarly says **Kātyâyana**<sup>5</sup> : "After abandoning an impotent or a degraded husband, when a  
 "woman secures another husband, a son born upon her is the *Paunarbhava*  
 "son, is clearly of the same class as of the progenitor."  
 35 One whom the mother and the father give up and offer, such a one is the *Dattaka*. As says **Manu**<sup>6</sup> : "That (boy) equal (by caste) whom his  
 "mother or his father affectionately give with (a libation of) water, in  
 "times of distress, such a son is the *Datrima* son" (130).

1. Dh. S. II. II. 3.14.

2. Ch. ix. 127.

3. Ch. xv. 3.

4. Ch. ix. 172.

5. Verse 860.

6. Ch. IX. 168.



## Sûlapâṇi

### Yājñavalkya, Verse 131

One who is sold by the mother and the father and taken up as a son, such a one is a *Kṛita* son. Vide the text, "such a one whether of a "different *varṇa* or a similar."

5

**Manu**<sup>1</sup> describes the son self-made: "But when one makes another "as his son who is similar (in caste) and is acquainted with the right "and the wrong, and who is endowed with the qualities of a son, such a one "should be known as a *Kṛtrima* son."

**Manu**<sup>2</sup> describes the *Datṛima* son thus: "He who is without his "parents, or one who has been abandoned without a (proper) reason, "gives himself (to a man) is called the son 'self-given'" *Swayamdatta*.

10

*Garbhavinna* has been described by **Manu**<sup>3</sup>: "Where a pregnant "woman is taken in marriage, either (with her pregnancy) known or "unknown, (the child in) the womb belongs to the man who weds her, "and he is called *Sahoḍha*" (131).

15

(21) Having thus premised sons, chief and secondary, the Author explains the order of their succession to the heritage

### Yājñavalkya, Verse 132 (2).

Among these, in the absence of the preceding, each next succeeding is a giver of the funeral cake and the inheritor of a share.

20

**Mitākṣharâ** :—(22) Of these aforementioned sons of twelve kinds, in the absence of the preceding, each next in order, as enumerated, must be considered to be the *pinḍadah*, giver of the funeral cake, i. e. performer of the *S'râddha*, and *ansaharah*, the inheritor of a share, i. e. successor to the effects.

25

(23) If there be an *Aurasa*<sup>4</sup> (legitimate) son and a *Pautrikeya* (son by an appointed daughter), **Manu** propounds<sup>5</sup> an exception to the seeming right of the *Aurasa* son to take the whole estate: "A daughter "having been appointed, if a son be afterwards born, the division

30

1. ix 169.

2. IX. 177.

3. IX. 173.

4. The reading in the *Mitākṣharâ* is *Aurasa-pautrikeya-samavâye* i. e. when the legitimate son and the son of an appointed daughter co-exist. Mr. Colebrooke translates—"If there be a legitimate son and an appointed daughter"—and adds in the foot-note "so this passage is interpreted by *Viśveśwara* & *Bâlambhaṭṭa*." But *Bâlambhaṭṭa* distinctly refers to the passage as it occurs in the text &c. (see p. 174 l. 15.) "*Aurasapautrikeyayor mithaḥ Samavâye ityarthah*." While *Viśveśwara* has (p. 58 l. 17.). "*Aurasa-putrasya, putrikâyâścha sadbhâve ityarthah*." Trs. p. 147, l. 8.

5. Ch. IX. 134.



- "of the heritage must in that case be equal : since there is no right of primogeniture for a woman."<sup>1</sup> (24) So also, even in the case of others, a quarter share to inferior sons, even when the superior ones exist, has been ordained by **Vasiṣṭha**:<sup>2</sup> "When a son has been  
5 "adopted, if a legitimate son be (afterwards) born, the adopted son "shares a fourth part." (Here) the mention of 'the son adopted' is indicative also of others such as the son bought, the son made, and the rest by reason of the context.<sup>3</sup> (25) Accordingly **Kātyāyana**<sup>4</sup> says :  
10 "If an *Aurasa* son be born, the other sons take a fourth part<sup>5</sup>, "provided they belong to the same tribe ; but if they be of a different "class, they are entitled to food and raiment only." (26) "Those "who belong to the same tribe" *e. g.* the adopted and the *Kṣhetraja* sons and the like, these when an *Aurasa* son exists, share a fourth part. But those who belong to a different class *e. g.* "the damsel's son,"  
15 "the son secretly born," "the son received with the bride," and "the son of a re-married woman," these when an *Aurasa* son exists, do not take a fourth part, but are entitled to food and raiment only. (27) Although there is a text of **Viṣṇu** *viz.*: "Exceptionable sons are,

1. This passage is obscure and is not in a line with the logical accuracy and perspicuity which are the invariable characteristics of *Bhaṭṭa Vijñāneśvara*. Taking the text of *Manu* by itself it says that a female is not entitled to the rights of primogeniture. *Bālabhaṭṭa* (p. 174 l. 17) explains it by suggesting that it is meant to meet a position which may be taken on the strength of the rule that the appointed daughter herself is a son ( पुत्रिकैव पुत्र इति द्वितीयायार्थेनह ), while *Vijñāneśvara* refers to the text of *Manu* for showing that when an *aurasa* and a *pautrikeya* compete, it may be urged that the entire estate should go to the *Aurasa*, had it not been for the rule of *Manu* in IX. 134.

The *Subodhini* (p. 58 l. 17-23), has attempted to explain the passage thus: "By this text of *Manu*, the eldest does not get the preference share allowed to him "in the text (of *Manu* Ch. IX.112 see above p. 187 ll. 5-7). Indeed, under this text "he is only entitled to an equal portion. Ordinarily an *Aurasa* alone is entitled to "the entire heritage, but by the text of *Manu*—"The division must be equal"—the "*Aurasa* does not take the entirety and thus the *Pautrikeya* takes a share. This seems to be the only way in which the two passages can be connected together."

2. Ch. XV. 9. स चतुर्थभागभागी स्यात्—"he (the adopted son) shall be the partaker of a fourth share".

3. *v. l.* पुत्रीकरणविशेषात् Tr. "for they are equally adopted as sons." *Colebrooke* prefers this reading. 4. Verse 857.

5. This reading is followed in the *Madanapārijāta*, and *Vīramitrodaya*. But the *Kalpataru*, *Ratnākara* and other compilations read a "third part." Vide *Jīmūta Vāhana* C. 10§. 13. *Colebrooke*.

"a damsel's child, a son of concealed origin, one received with a bride, and a son by a twice-married woman ; these never share the funeral cake nor the inheritance", still it is intended to prohibit a fourth share when an *Aurasa* son exists. But if there be no legitimate son or other ( preferable claimants ), even the damsel's child and others succeed to the whole of the paternal estate, under the text : " In the absence of the preceding, each next succeeding &c."

( 28 ) Similarly, although there is a text of *Manu*<sup>1</sup>: " The *Aurasa* son alone is the ( sole ) heir of his father's wealth ; but, as a matter of compassion he may give maintenance to the rest," that too must be considered as applicable to a case, where the son adopted and the like are hostile to the *Aurasa* son, and devoid of good qualities.

( 29 ) Here a special rule regarding a *Kṣhetraja* son has been propounded by the same<sup>2</sup> Author: " Let the *Aurasa* son, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the *Kṣhetraja* son " i. e. where there is hostility as well as want of good qualities then a sixth part, but if only one of those defects exist, a fifth part, and thus the two cases should be discriminated.

( 30 ) Although *Manu*<sup>3</sup> having premised two sets of six sons, has declared the first six to be heirs and kinsmen, and the last six to be not heirs but kinsmen viz. " The *Aurasa* son, as also the son begotten on a wife, the son adopted, and also a son made, a son secretly born, and so a son cast off, are the six heirs, and kinsmen ( 159 ). The damsel's son, the son received with the bride, the son bought, as also the son begotten on a remarried woman, the son self-given, and the son born of a *Sūdrā* woman, are six not heirs, but kinsmen ( 160 );"

( 31 ) that too must be expounded as signifying, that the first six may take the heritage of their father's *sapindas* and *samānodakās*, if there be no nearer heir, but not so the last six; ( The tie of ) kinship ( *bāndhavatvam* ) however, is alike in the case of both by reason of their being *Samānagotra* and *Sapinda* and thus being capable of performing the duty of offering libations of water and the like. ( 32 ) It must be thus expounded; for the mention of a given son in the following

- passage<sup>1</sup> is intended for any adopted succedaneous son: "A son  
 "given away must never claim the family and estate of his natural  
 "father. The funeral cake follows the family and the estate, and of  
 "him, who gives (away his son), the funeral offerings fail." (33) The  
 5 right of inheriting their father's estate, however, is, without exception  
 equal in the case of all in the absence of sons mentioned next above  
 each, in the order of precedence, as the text<sup>2</sup>: "Not brothers, nor  
 "parents, but sons are heirs to the estate of the fathers," purposely is  
 intended as affirming the succession of all subsidiary sons other than  
 10 the *Aurasa* son, the right of the *Aurasa* son having been already  
 propounded by the text:<sup>3</sup> "The *Aurasa* son alone is the (sole) heir  
 "of his father's wealth", and the word heir (*dāyāda*) being well-  
 known as used to signify any successor other than a son as in (the  
 expression) "The heirs also should be made to give &c." (34) The  
 15 variation which occurs in the institutes of *Vasīṣṭha*<sup>4</sup> and others

1. Manu Ch. IX. 142. 2. of Manu Ch. IX. 185. 3. of Manu Ch. IX. 163.

4. See *Subodhini* (pp. 60-61 Tr. p. 151 ll. 32-38, p. 152 ll. 1-34.) Referring to this passage in the *Subodhini* Mr. Colebrooke adds the following note: *Manu* declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue (IX. 165) and proceeds to define the remaining ten succedaneous sons (IX. 166-178.) But *Vasīṣṭha* states the appointed daughter as third in rank (XVII—166), which is a disagreement in the order of enumeration. The same must be understood of other institutes of law viz *Viṣṇu* 15-2-37. *Nārada* (13-44-45.) *Devala* &c. How then is the succession of the next in order on failure of the preceding reconcilable? The author proposes this difficulty with its solution. His notion of the mode of reconciling is this: *Manu* declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore, to be a loose enumeration, and not one arranged with precision. Accordingly *Manu*, in saying, "Let the inferior in order take the heritage," does not limit this very order, but intends one different in some respects; and the difference is relative to good and bad qualities. The same must be used with the variations in other codes. Moreover what is ordained by *Yājñavalkya* is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father and from the soil appertaining to him, have preference before the son given and the rest. The son received with a bride, produced from soil which the adoptive father accepts for his own is placed in the second set by the authority of the text, or because the mother did not appertain to the adoptive father at the time when the child was begotten. The whole is therefore unexceptionable.

respecting some one in both sets, must be understood as founded on the difference of having been<sup>1</sup> or not been endowed with qualities. (35) But the assignment of the tenth place to the son of an appointed daughter in **Gautama's** text<sup>2</sup>, is relative to one differing in tribe. Therefore this is established, that in the absence of those (mentioned) in the preceding order, those following next in order will be entitled to the inheritance.

(36) As for the text<sup>3</sup>: "If among (several) brothers sprung "from one (father), one have a son, **Manu** has declared them all as "fathers of a male offspring on account of that son," that also is intended to forbid the adoption of others, if a brother's son can possibly be adopted, and not for setting up a claim as a son, as that would be inconsistent with the subsequent text (Yājñ. II. 135.) "Their sons, the *Gotrajas* and the *Bandhus* &c."

### Śûlapâṇi

#### Yājñavalkya, Verse 132

He becomes entitled to offer *piṇḍa*, *śrāddha*, and the like, and also is entitled to take the wealth.

When, however, the brother's son exists, the *Kṣhetraja* and the like others substitutes of a son are not entitled, as says **Manu**<sup>4</sup>: "If among brothers born of one father, one have a son, all these (others) through that one, are (regarded) as having a son; so *Manu* has declared." Then also, in the absence of brother's sons, should be made the sons such as the *Kṣhetraja* and the others.

Of the co-wives of one husband also who are without a son, the son of a co-wife is the son himself, as says **Manu**<sup>5</sup>: "Of all the wives of a one, if one have a son, *Manu* declares them all (to be) mothers having "sons through that son." 'Wives of one' i. e. of one husband (132).

(37) The Author next adds a restrictive clause by way of conclusion to what had been stated

#### Yājñavalkya, Verse 133 (1)

This law is propounded by me in regard to sons equal by class.

**Mitākṣharâ**—(38) *Only* among sons equal by class, *ayam vidhiḥ*, this law, i. e. (the one) expressed in the text: "in the absence of the

1. पुत्रश्च &c (p. 90 l. 14) have a reference to the sons and are adjectives qualifying that term.

2. Ch. XXVIII. 31.

3. Of *Manu* Ch. IX. 182. 4. IX. 182. 5. IX. 183. See *Vishnu* also XV. 41.

“preceding, the next following in the order ( of enumeration ) &c.” and not among sons differing in class. (39) Here, moreover, the damsel’s son, the secretly born son, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters, as it has already been stated that they are not within the definition of tribe and class. (40) So also, since issue procreated in the direct order of the tribes, as the *Mūrdhâvasikta* and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the *kṣhetraja* son ( of the wife ) and the rest.

(41) But the son by a *Sûdrâ* wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus *Manu* says<sup>1</sup>: “But whether a man have sons or no sons ( by wives of “other classes ), no more than a tenth part, must be given to the “son of a *S’ûdrâ* woman, according to law.” (42) “Whether he have sons” *i. e.* whether he have existing the male issue of a regenerate tribe; or “have no sons” *i. e.* have no issue of regenerate tribe, in either case, upon his demise, the son of the wife or other (kind of son,) or any kinsman (*sapinda*) shall not give to the son of the *Sûdrâ* more than a tenth part of the father’s estate. (43) Thus it appears from this very text, that the son of a *Kṣatriyâ* or a *Vaiśyâ* wife takes the whole of the property on failure of issue by women of equal class.

[ Colebrooke Sect. XII ]

[ Rights of a son by an unmarried female in the case of a *Sûdra*’s estate. ]

(1) The Author next delivers a special rule concerning the distribution of the estate of a *S’ûdra*

1. Ch. IX. 154. The author of the *Subodhini* reconciles this text of *Manu* with that of *Yājñavalkya* (II 125. p. 1033) above in which it has been laid down that the son born of a *Sûdrâ* woman is entitled to one share, by noting that one share in that text of *Yājñavalkya* is obviously one of the 10 shares into which the estate is to be divided under that text *viz.* 4, 3, 2 & 1. ( See. *Subodhini* p. 61 ll. 22-25. Tr. 153. ll. 31-35 & p. 154. ll. 1-4.)

## Yājñavalkya, Verses 133 (2), 134

A son begotten by a Śūdra even though upon a *dāsī*<sup>1</sup> (female slave) may take a share by choice [ 133 (2) ].

But after the death of the father, the brothers should make him a half-sharer; if he have no brothers, he may take the whole property, unless there are sons of daughters. ( 134. )

1. Who is a *Dāsī*—The woman entitled to be called a *Dāsī* or an *avaruddhā strī* (a permanent concubine) must be one with whom the connection is open and who lived as a member of the family. Thus a Mahomedan prostitute cannot be called a *dāsī* though she was a permanent concubine. *Mt. Haidri vs Narindra Bikramjit*, 1 Luck. 184. See also *Rajini Nath Das vs Nitia Chandra Dey*, 48 Cal. 643, (F.B.). *Bai Monghibai vs Bai Nagubai*, 24 Bom. L.R. 1009 = 47 Bom. 401 = 53 I A. 153.

It is not, however, subject to the further condition that a marriage could have taken place between them. *Soundararajan vs Arunachalam*, 39 Mad. 136. Permanence of the relationship is sufficient. *Rama Rajadharan vs Papammal*, 48 Mad. 805.

A Brahmin mistress of a Śūdra is not a *Dāsī*, nor the son a *Dāśputra*; he has no right to the property of the father, *Ramchandra vs Hanamnaik* 60 Bom. 75.

Nor can a kept mistress whose husband is alive be called an अवहृदा. *Anandilal vs Chandrabai* 48 Bom. 203.

The question as to the status and the share of a *Dāśi-putra* was referred to and discussed in the following cases. In almost all these cases the passages from *Yājñavalkya* and *Vijñāneśvara's* commentary of the *Mitākṣharā* thereon were referred to and discussed. The following is a short summary of the decisions having a special reference to this part of the text.

In any view of the texts, an illegitimate son is looked upon as a member of a family, entitled to some, if not all, the rights of a member as such. He is entitled to maintenance in those cases where he does not succeed by survivorship or inheritance. In this respect Hindu law differs from English law in so far as it does not treat him as a *filius nullius*. See *Hargobind Kuari vs Dharam Singh* 6 All. 329. *Rahi vs Govind*. 1 Bom. 97. Among the Śūdra caste, the illegitimate sons in default of legitimate sons are entitled to inherit. *Inderum vs Ramaswamy* 13 M. I. A. 141. *Sadu vs Baiza* 4 Bom. 37 (F. B.)

The illegitimate son of *Kṣhatrīya* by a *Śūdrā* woman is not a Śūdra, but of a higher caste called *Ugra*. *Brindavana vs Radhamani* 12 Mad. 32.

N. B.—An illegitimate daughter is not entitled to inherit, the claim of the sons being based on texts which specially mention them, the daughters not being so mentioned, *Bhikya vs Balu* 32 Bom. 562 = 10 Bom. L. R. 736.

But a mother can take as heir to her illegitimate son. *Jagarnath Gir vs Shef Bahadur Singh* 57 All. 85 at p. 106. (a case of Gosais).



\* PAGE 91.

**Mitākṣharā:**—(2) A son begotten by a *Sūdra* on a *dāsī* (female slave), obtains a share *kāmataḥ*, by choice, i.e. by the option, of the father. But, after (the death of) the father, if there be sons of a wedded wife, then these brothers should make that son of the *dāsī* (female slave), a half-sharer, i. e. they should give him a half<sup>1</sup> from their

(Contd. from last page)

In *Sarasuti vs Mannu* 2 All. 134 the offspring of a kept woman or a continuous concubine was held to be on the same level as to inheritance as the issue of a *dāsī* (female slave) by a *Sūdra*; and he was held capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of the Agra Tenancy Act, 1901. *Ramkali vs Jamma* 30 All. 508. In *Jogendra Bhupati vs Nittyanand* 11 Cal. 713 and 18 Cal. 151 (P. C.) 17 I. A. 128, both the High Court and the Privy Council recognised the right of an illegitimate son as a coparcener with his legitimate brother in the ancestral estate and he was held to be entitled to take by survivorship even in the case of an Impartible estate. He does not, however, acquire a joint interest in the property with his father in the ancestral family property. It is only after the father's death that his right commences, so that if the property is disposed of by the father during his lifetime, he cannot claim a share in it after his death. *Ram Saran vs Tekchand* 28 Cal. 195. Nor does the illegitimate son become a co-parcener in the fullest significance of the term, and therefore he is not entitled to claim by survivorship against the collateral relations of the father. *Krishnayyan vs Muttusami* 7 Mad. 407. *Parvathi vs Thirumalai* 10 Mad. 334.

In a case of disputed succession among *Sūdras* to an Impartible estate where the claimants were sons by two wives of the same caste, but of different grades, the son by a wife though junior, but of a superior grade, was held to be entitled to preference. *Ramasami vs Sundaralingasami* 17 Mad. 422.

The *Dāsīputra* is entitled to maintenance among the regenerate classes. It does not cease when he comes of age. But he is not entitled to his marriage expenses. *Motichand vs Chandrabai* 26 Bom L. R. 488.

1 And this is made clearer by *Bālabhāṭṭa* (p. 182 ll. 22-23) & *Subodhini* (p. 61 l. 26.) "From the entire estate, a half of what would be regarded as his share i. e. one half of the amount allotted to a legitimate issue."

He is entitled to one-half of the share to which he would have been entitled had he been legitimate. The widow by marriage and the sole illegitimate son take equally. *Kamulmal vs Visvanatha Swami Naicker* 25 Bom. L. R. 577 = 50 I. A. 32. See 18 B. L. R. 70 = 40 Bom. 369.

Members of legitimate descent cannot claim heirship to a line of illegitimate descent. *Maharajah of Kolhapur vs Sundaram Ayyar* 48 Mad. 1



own allotment. However, should there be no sons of a wedded wife, the son of the *dâsî* (female slave) shall take the whole estate, provided there be no daughters of a wedded wife, nor their sons. But if there be such, the son of the *dâsî* (female slave) participates for half a share only. (3) From the mention of a *S'ûdra* in this place, moreover, (it follows that) the son begotten by a man of a regenerate tribe on a *dâsî* (female slave) does not obtain a share even by the father's choice, nor even a half, much remote (is the chance of his claiming) the whole. But, if he be docile, he receives a bare maintenance. [ 133-134. ]

Vīramitrodaya

The Author states the characteristics of the twelve sons, by the verses beginning with ' *Aurasa* ' etc.

Yājñavalkya, Verses 128-134

*Dharmapatni*, 'a lawfully wedded wife', i. e. of the same *varṇa* married according to (the dictates of) law, of her, born from the husband is the *Aurasa* son. Here (the condition of) belonging to the same *varṇa*, by reason of its relating to the twice-born is intended as spoken of as referring to the three *varṇas* such as the *Brāhmaṇa* and the rest. Otherwise according to *Pârījâta* : " sons of the *Kṣatriyâ* and " *Vaiśyâ* wives married to a *Brāhmaṇa* and born of him may not be " included among the twelve kinds of sons." By reason of his being procreated from the breast ( *uras* ) of the husband, he is ( called ) the *Aurasa*.

"He who is born of her, that son shall be my son", under this rule of an agreement stated by *Vasiṣṭha*,<sup>1</sup> a maiden who has been married is called the *Putrikâ*; a son born of her is the *Putrikâsuta*; thus his characteristic has been stated as derived from a parity of expression. Such a one, moreover, is equal to an *Aurasa*, is entitled to take the heritage of the maternal-grandfather, and to offer exequal rites to him. In this connection, *Manu*<sup>2</sup> states a special rule. " To the mother first "should the *putrikâsuta* offer a *pinḍa*; the second, however, to her "father, and the third to the father's father ".

One born from one appointed in regard to the land of another, whether of the same *gotra* or of a different *gotra*, is the *Kṣhetraja*, the son of the owner of the land. Where, however, an arrangement has been made

as e.g. "Whatever issue is begotten on this shall belong equally to both of us", there, he is the son both of the owner of the seed as well as of the soil. This is the meaning of the last verse. That has been stated by Manu<sup>1</sup>: "Where by a special compact a field is made over to another  
5 "for ( sowing ) the seed, of that ( i. e., the produce of the seed ) the "participators in this world are considered to be both the owner of the "seed as well as of the soil" ( 128 ).

*Gr̥he*, ' in the house ', upon the wife by another *prachchhanna*, 'secretly', i.e. even without an appointment, as the result of a conception from a secret ( sexual ) connection *utpannah*, a son ( thus )  
10 'produced,' such a one, however, is declared to be *Gūḍhaja*, 'one secretly born '. In this connection Manu<sup>2</sup> ( says ) " One in whose "house a son is born, and it is not known by whom he was begotten, "such a one being born secretly in the house, belongs to him on whose  
15 "wife he is born ". *Talpa*, ' wife ', i. e. the wedded wife.

On a maiden i. e. on an unmarried daughter, the son born is the *Kānina*; such a one is the son of the mother's father. vide Viṣṇu :  
" By him, the mother's father becomes ' the father of a son ' ; he should  
"offer ( to him ) *pinda* and take ( his ) property ". If upon marriage  
20 the husband be without an issue, even of him such a one is ( entitled to be ) a son, vide this text of the *Brahmapurāṇa* : " If from one who "has been taken in marriage, a son was born ( while ) in the father's "house from one of the same *varṇa*, such a one is the *Kānina* son again  
"of him to whom she is given ( in marriage ). ( 129 )."

One who is married again is ' a remarried woman ' *Punarbhāḥ*;  
upon her whether deflowered i. e. consummated, by the previous  
husband, or undeflowered i. e. not consummated, a son born is called  
*Paunarbhava*, ' the son of a re-married woman.' Here *Kātyāyana*<sup>3</sup> :  
" One born from her is the *Paunarbhava*, and it is clear he is the son  
30 " of the progenitor ".

The father, or in his absence under his permission, the mother, the son whom he ( or she ) may, out of affection, give with ( the libation of )  
water to another, such a one becomes the *Dattaka* ' adopted ' son of  
the acceptor. As says Manu<sup>4</sup> : " The heritage and the *gotra* of the  
35 "genetive father the son given shall not take; the ( right of offering )  
"pinda follows the *gotra* and the ( right to ) inheritance; from one who  
"gives away, the exequial rites recede." *Swadhā*, ' the exequial rites "  
i. e. the *śrāddha*, the funeral and allied rites. ( 130 ).

*Tābhyām*, 'by the two', i. e. by the mother and the father, *vikritaḥ*, 'sold', that son who was *Kṛita*, i.e. 'bought' becomes (the son) of the purchaser.

*Kṛtrimaḥ*, 'a son made', under a request made by oneself, viz. 'be my son', and agreed to thus, viz. 'I am thy son', one accepted is a *Kṛtrima*, i.e. 'a son made.' By the use of the word *cha*, 'and', is added that it was 'with the consent of the mother and the father'; since while they are living he is dependent on them.

Even without a request, in the absence of the mother and the father, or one who has been abandoned, one who *swayam*, 'himself', offers as a son, such a one is *Swayamdatta*, 'a son self-given', is the son of the acceptor.

While in the womb, by reason of the mother's marriage only, one who becomes the son of the parents (thereafter) married, becomes the son of the husband and is called *Sahodhaja*, 'a son received with the bride.' That has been stated by *Manu*<sup>1</sup>: "Where a pregnant woman is married, 'either knowingly or unknowingly, to the husband who weds (her) 'belongs (the child in) the womb, and he is also called *sahodha*, 'the son "received with the bride" (131).

One, however, who by his parents *utsr̥ṣhto* 'has been abandoned', or owing to their inability to maintain him has been given up, and by another is taken up as a son, such a one (becomes) the son of the acceptor known as *Apavidḍha*, 'a deserted son', (132).

*Eṣhām*, 'of these', twelve sons, *ṭpūrvapūrvābhāve*, 'in the absence of the one preceding', *paraḥ paraḥ*, 'each one next succeeding', becomes *piṇḍadaḥ amsaharāścha*, 'the giver of the (*piṇḍa*) funeral cake, and the inheritor of a share' also.

The word *amśa*, 'share', in the case of a *putrikā* and *kṣhetraja* means the entire share, under the text of *Likhita* and the *Brahmapurāṇa*, and also vide the text of *Kātyāyana*<sup>2</sup>: "When an *aurasa* son is born, the '(other) sons of the same *varṇa* are entitled to a third share; while "those not of the same *varṇa* receive food and raiment'.

Even in regard to other sons of the same *varṇa*, *savarṇa*, viz. the *dattaka*, *kṛtrima*, *gūḍhotpanna* and *apavidḍha*, the word *amśa* has the sense of the entire share. "The *aurasa* son alone shall be the 'owner of the paternal estate; as for the rest, in order to avoid harshness,

"one may give maintenance," this text of Manu<sup>1</sup>, it should be understood, has application where the *Aurasa* son is endowed with good qualities and the others are worthless [ 132 (2) ].

5 *Ayam vidhiḥ*, 'this law,' *i. e.* 'in the absence of the one preceding, each one next succeeding' etc. *sajātiyeṣṭu*, 'in regard to (sons) equal by caste,' *i. e.* the sons of the (first) three *varṇas*, *mayoktaḥ* 'has been propounded by me'. In regard to those not of the same *varṇa*, even if there be a *putrikâputra*, the *kṣhetraja* son of the same *varṇa* is entitled to the inheritance; thus should be observed the arrangement in regard  
10 to the rule, in consonance with the text of Kâtyâyana cited above [ 133 (1) ].

*Śûdreṇa*, 'by a Śûdra' however, *dâsyâm*, even though upon a *dâsi*,  
*i. e.* upon a *śûdra* woman not married, the son *jâtaḥ*, 'born', *kâmataḥ*, 'by choice', *i. e.* at the option of the father, may be made the partaker of a  
15 share equal to other sons.

*Mṛte pîṭari*, 'after the death of the father', when a partition is made, *bhrâtarāḥ*, 'the brothers', *i. e.* the sons by the married wife, *tam*, 'him', *i. e.* the son by the *dâsi*, should make a partaker of a half share. The *dâsîputra*, when there are no sons by a married wife, and  
20 in the absence of the sons of the daughters of the father, *i. e.* of the daughters' sons, and by the *a fortiori* reasoning, in the absence of the daughters, *sarvam*, 'the entire' property of the father, *haret* 'may take', [ 133 (2), 134 ].

### S'ûlapâṇi

25

#### Yājñavalkya, Verse 133

This law which has been propounded in regard to the *Aurasa* sons and others, should be understood as applicable to sons of the same caste, with the exception of the 'son bought.'

*Dâsyâm*, 'upon a *dâsi*', *śûdreṇa jâtaḥ*, 'one begotten by a *śûdra*,' at the  
30 desire of the father becomes entitled to a share like other sons (133).

#### Yājñavalkya, Verse 134

*Mṛte tu pîṭari* 'when the father, however, is dead', the sons of the father by a wedded wife, should make the son by a *dâsi*, the partaker of a half share. If sons of that description, or if a daughter's son of that description  
35 do not exist, then he alone should take the entire patrimony (134).

[ COLEBROOKE—CHAPTER II. ]

[ Section I. ]

[ Right of the widow to inherit the estate of one who leaves no male issue. ]

( 1 ) That sons, principal and secondary, take the heritage, has been shown. In the absence of them, the order of succession, in the case of all,<sup>1</sup> is next declared.

5

Yājñavalkya<sup>2</sup>, Verse 135, 136.

( 2 ) The wife, and the daughters also, both parents, brothers<sup>3</sup> likewise, and their<sup>4</sup> sons, gentiles, cognates, a pupil and fellow-students, (135).

10

On failure of the prior among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all classes<sup>5</sup> ( 136 ).

1. The uses of the word *Dāya* have been peculiarly illustrated in this sentence of *Vijñāneśwara*. In the first clause, he observes that it has been shown that sons, principal and the secondary, take the *Dāya* ( heritage ), meaning thereby, what has been said from the commencement of this chapter to this stage. Then in the following clause he observes, “ now follow the order of succession of those who ‘take the *Dāya*’ ( *dāyāda* ) in the absence of those *i. e.* the sons. ” This shows how the word *Dāya* has been used both for what a member of a joint family takes by survivorship, as also for what an heir takes by the right of inheritance.

This part of the text was referred to in the following cases : *Rahi* vs *Govinda* 1 Bom. 104. *Gandhi Maganlal* vs *Bai Jada* 24 Bom. 192. *Moolji* vs. *Cursandas* 24 Bom. 563. *Suraya* vs. *Lakshminarasamma* 5 Mad. 291. *Nachiappa* vs *Chinnagasami* 29 Mad. 453. *Chinnasami Pillai* vs *Kunju Pillai* 35 Mad. 152.

2. Note the following cases among others in which this passage was referred to.

*Sakharam* vs *Sitabai* 3 Bom. at 360. *Khodabhai* vs *Bahdhar Dala* 6 Bom. 541. *Moolji* vs *Cursandas* 24 Bom. at p. 568. *Rutheputty Dutt Jha* vs *Rajundar Narain* 2 M. I. A. 132.

3. The word ‘brothers’ is interpreted in *Bālabhāṭṭi* as including both brothers and sisters. Moreover the word brother has been interpreted to have been used for brothers of the whole as well as of the half blood. See *Muthisami* vs *Muttukumarsami* 16 Mad. at p. 25.

4. The expression ( तत्सुत ) their sons has been interpreted in *Bālabhāṭṭi* as including ‘daughters’ of brothers also and there is an elaborate note as to the right of daughters ( see *Bālabhāṭṭi* p. 207. )

5. Both *Bālabhāṭṭa* and *Viśveśvarabhāṭṭa* observe that the word ‘all’ *sarva*, is not to be taken as adjectival of the word classes, but independently. सर्वशब्दो न वर्णविशेषणं अपि तु स्वतंत्र एव ( see *Bālabhāṭṭi* pp. 187-88 Subodhini p. 62. 1. 1. )

**Mitākṣharā :—( 3 )** He who has no son, of any (sort) among the twelve descriptions above stated<sup>1</sup> is **aputraḥ**, *one having no male issue*. Of such a man *having no male progeny*, **aputrasya**,<sup>2</sup> and **swaryâtasya**, of one *who has departed for heaven i. e.* who has departed for another world, 5 **dhanabhâk**, *the heir or successor to the property*, is that person, **eṣhâm**, *among such as have been here enumerated viz., the wife and the rest*, **uttara uttarah**, *who is next in order*, **pûrvasya abhâve**, *on failure of the first mentioned* respectively. Such is the connection (of words in this sentence.)

( 4 ) **Ayam vidhiḥ**<sup>3</sup>, *this rule*, about the taking of heritage or the 10 order of succession, must be understood **sarveṣhu varṇeṣhu**, *as extending to all tribes*, whether the *Murdhâvsikta* and others in the direct series of classes, or *Sûta* and the rest in the inverse order, and as comprehending the several classes, the *Brâhmanas* and the rest.

( 5 ) Among these, first, the wife takes the estate. **Patni**, *Wife*, 15 signifies a woman espoused by the performance of the nuptial rites; conformably with the etymology<sup>4</sup> of the term as implying a connexion with religious rites; moreover, the singular number has been used with a view to include

1. i. e. in verses ( 128-132. ) above on page 1045 above.

2. The word 'son' *putra* is used here in an extended sense. See *Buddha Singh vs Lattu Singh* 34 All. 670. See *Bâlabhaddi* p. 187 l. 27 "अत्र पुत्रग्रहणं पौत्रपौत्रयोरप्युपलक्षणम्."

3. The verses 135 and 136 of *Yājñavalkya* given above indicate the general rule of succession to the estate of one who leaves behind him no male issue. *Vijñāneśvara* first explains generally all the words in these verses. After that, he takes the case of each claimant, and after examining other texts for and against the right of inheritance in each case, deduces a conclusion which is to be accepted as *his*. The division by Mr. Colebrooke of this portion of the *Mitākṣharā* into several sections has been from this point of view. Thus §§. 5-39 of sect. I. (pages 91-95) cover the discussion as to the right of a wife, (*patni*.)

Sect. II. of the daughter & daughter's son

III. The Parents.

IV. The Brothers.

V. The Gotrajas.

VI. The Bandhus.

VII. The Ulterior heirs.

4 i. e. as contained in *Pāṇini's* rule (at 4-1-33.) 'पत्युर्नो यज्ञसंयोगे' "The substitute न replaces the final इ of पति before the feminine affix ( डीप् ई, ) when the word so formed indicates "a wife, who takes part in the sacrifices of her husband." Thus it would appear from a strict interpretation of this rule that if a man has

the wives of all castes. And, hence, if there are many, and these of the same and also of different tribes, they take after dividing the estate according to their respective shares.

( 6 ) Vṛddha-Manu also declares the widow's right to the whole estate : " The widow<sup>1</sup> of a childless man, keeping unsullied her husband's bed and persevering in religious observances shall herself present his funeral oblation and also obtain his entire share." Vṛddha-Viṣṇu also ( ordains ) : " The wealth of him who leaves no male issue, goes to his wife; on failure of her it devolves on his daughters; in their absence it goes to the father, (and) failing him it devolves upon the mother." So also Kātyāyana<sup>2</sup>. "A wife succeeds to

( Contd. from last page )

more wives than one, only the eldest or the one who joins with her husband in the performance of sacrifices would be called a *Patni* and not the rest. But it is not so. It is the capacity to take part in a sacrifice, and not actually officiating at it, that determines the title for the *Patni*. Moreover, the wife of a Śūdra may never have this title as the husband not being entitled to perform a sacrifice, there would be no occasion for the wife to join with him at it. The term, however, is extended to a Śūdra also. It would thus appear that the term applies to a lawfully wedded wife as distinguished from a Concubine. Strictly speaking and considered from the Hindu theological point of view, it is only the first marriage, whether of a man or a woman, that is considered as one intended to accomplish the foremost of the four objects of a man's life i. e. the *Dharma*, the other three being *Artha*, *Kāma*, & *Mokṣha*. Any other marriage is considered as being for either the second or the third of these *Puruṣhārthas*. All the same the relation between a man and the women who have become lawfully wedded would be that of a husband and wife ( *Pati* and *patni*. ) And so the author of Mitākṣharā adds generally that the union of the two by the performance of nuptial rites establishes between them the relationship of husband and wife. ( see also *Bālabhāṭṭi* & *Subodhini* ) see also observations in *Brindavana vs Radhamani* 12 Mad. at pp. 72-76 &c.

He also adds, that the singular number is used to indicate the group of heirs indicated by the collective term *Patni*, so that if there are many wives from different castes, all take as wives, but the share of each is to be determined by the caste to which she belongs.

This portion is not found in Colebrooke's translation probably because his copy did not contain the reading found here.

1 See Ponnappa vs. Pappuwayangar 4 Mad. at p. 31. & Vedammal vs. Vedanayangar 31 Mad. 100.

2. Verse 926



“the wealth of her husband, who is not<sup>1</sup> unfaithful, and failing her,  
“the daughter ( inherits ) if unmarried.” And again : “Of a man ( who  
“has died ) leaving no male issue, the wife born in an Ārya<sup>2</sup> family,  
“or even<sup>3</sup> the daughters, failing her the father, the mother, the  
5. “brother<sup>4</sup> and<sup>5</sup> his sons are pronounced to be the heirs”. Also Br̥haspati<sup>6</sup>:  
“Notwithstanding there be kinsmen, a father, a mother or a uterine  
“brother be present, the wife of a deceased man, who left no male  
“issue, shall take his share.”

( 7 ) Passages, adverse to these<sup>7</sup>, likewise occur. Thus Nārada<sup>8</sup> has  
10 stated the succession of brothers, though a wife were living, and has  
directed a bare maintenance to the widows thus : “Among brothers, if  
“any one die without issue<sup>9</sup>, or enter a religious<sup>10</sup> order, let the rest of the  
“brothers divide his property excepting the *strīdhana* (of his wife). They  
“should make provision for the maintenance of his wives till their death,  
15 “provided they preserve unsullied the bed of their lord. They may

1. Colebrooke translates, “provided she be chaste.”

This also includes by implication the other condition that she should not be  
opposed to the husband ( see Bāṁbhāṭṭi p. 189 l. 13. )

2. As opposed to one born in a non-Āryan family. Bāṁbhāṭṭa ( p. 189.  
l. 15 ) also observes that “birth in an Ārya family ” does not mean mere birth, but  
it means birth in a good family when the marriage was in the Anuloma form. It  
is to be noticed that both *Vijñāneśvara* and *Bāṁbhāṭṭa* admit by implication that  
wives from other castes were also entitled to be called *Patnis*. Colebrooke trans-  
lates अर्यकुलजा as “ of honest family.”

3. By the use of the word ( *Api* ) “ even ” daughter’s sons are also included  
( Bāṁbhāṭṭi p. 189 )

4. The word “ brother ” also includes the sisters ( Bāṁbhāṭṭi p. 189. )

5. The addition of ( *Cha* ) ‘ and ’ brings in ( their ) daughters also.  
( Bāṁbhāṭṭi ).

6. Ch. XXV. 648

7. These i. e. the passages cited above ( *Subodhini* ). Colebrooke tr. “ adverse  
to the widow’s claim.”

8. Ch. XIII. 25-26.

9. i. e. without male issue. Bāṁbhāṭṭi.

10. The Sanskrit word is *pravrajat* i. e. become a *Sanyāsi* and thus enter the  
fourth and last of the orders viz. ब्रह्मचर्यं, गृहस्थ, वानप्रस्थ and संन्यास.

"however, cut it<sup>1</sup> off in the case of those who behave otherwise." That the estate of a sonless man goes to the father or the brother has also been shown by **Manu**.<sup>3</sup> "Of him, who leaves no son, the father shall take the inheritance, or the brothers." : "Of a son dying childless, the mother shall take the estate, and if the mother also be dead, the father's mother shall take the heritage," by this text<sup>4</sup> he has likewise shown the mother's right to succession, as well as the paternal grandmother's : thus **Śaṅkha** also : "The wealth of a man who departs for heaven, leaving no male issue, goes to his brothers; failing them, his parents may take it, or his eldest wife," has thus declared the right of succession in order (of succession) of the brothers, the father, and also of the eldest wife. By **Kātyāyana**<sup>5</sup> also (has been said) : "If a man die while separate, and there are no sons, let the father take his property, or the brother, the mother, or the mother of his father successively."

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(8) An adjustment<sup>6</sup> of these and other<sup>7</sup> contradictory texts has been drawn out by **Dhāreśvara** thus : the texts<sup>8</sup> which lay down the rule that 'a wife shall take (the estate)' have reference to the widow

1. आच्छिन्नुः (Āchchhindyuh) i. e. should either not allow if the wives are unchaste or put a stop to the allowance after they become unchaste. This passage may be marked in connection with the maintenance of those widows who subsequently become unchaste.

2. This passage also occurs in the *Dâyabhâga* XI. 1. 48, where the word *Stri* has been used in reference to "women who were actually espoused, but had not the rank of wives," while *Vijñāneśvara* uses it pointedly with reference to *wives* using the word *patni*. See *Ponnappa vs Pappuwayyengar* 4 Mad. at p. 32; *Gangu vs Chandrabhagabai* 32 Bom. at p. 288; *Lallubhai vs Cassibai* 5 Bom. 122; *Savitribai vs Luzmibai* 2 Bom. 612 89; *Subramaniya Pandya Chokka Talavur vs Siva Subramanya Pillai* 17 Mad. 300.

3. Ch IX. 185.

4. Ch IX. 217.

5. Verse 928.

6. This is in accordance with the general rule that when there occur passages which are of equal weight but which are contradictory, the application must be adjusted, as otherwise the rule of option might follow. तुल्यबलविरोधे तु विकल्पः. See note on विषयव्यवस्था & विकल्प (on p. 35 n. 4 ante.)

7. i. e. the texts cited above and those texts following viz. *Gautama*, *Manu*, *Vasishtha*, *Nārada* & *Yājñavalkya*.

8. i. e. of *Vṛddha-Manu*, *Brhadviṣṇu*, *Kātyāyana* and *Brhaspati* cited above pp. 1067, 1068.

of a separated brother; and that also provided she be solicitous of authority for raising up issue to her husband<sup>1</sup>.

Whence<sup>2</sup> is it inferred, that a widow succeeds to the estate provided she seek permission for raising up issue, but not if she remained alone by<sup>3</sup> herself? From the text<sup>4</sup> (above cited) viz: "The father shall take the inheritance of him, who leaves "no son," and other similar<sup>5</sup> passages. For here a rule of adjustment and a reason for it must be stated<sup>6</sup> but no other rule of adjustment or reason exists. And also on the authority of the text of Gautama:<sup>7</sup>

1. *Niyoga* means raising up an issue to the deceased husband by appointment; see Yājñ. II. 127 above and notes (p. 1039 ll. 26-28 ).

2. This is the doubt raised by *Dhâreśvara* the solution of which is given immediately by him. *Dhâreśvara*'s view is "that a widow is entitled to inherit her husband's property only when she obtains authority to have male issue raised up to her husband by means of *Niyoga* (levirate); that if she obtains no such authority, she cannot inherit but is merely entitled to maintenance; and for this *Dhâreśvara* relies on the above quoted text of Nārada and also that of Yājñavalkya (II. 142). *Vijnāneśvara* combats this view and shows further on that *Dhâreśvara* has misapplied these texts. See observations of Chandavarkar J. in *Gangu* vs. *Chandrabhagabai* 32 Bom. 275 at p. 282 sqq.

3. *Na swatantrāyā* "and not if she remain independent." Colebrooke translates "but not independently of this consideration." But the word *Swatantrā* qualifies the widow (see Bālabhāṭṭi & Subodhini. p. 62. ll. 17-18.)

4. i. e. of *Manu* Ch. IX, 185.

5. i. e. of *Nārada* (XIII, p. 25-26) &c. "from... passages" i. e. on account of the contradiction appearing in these texts.

6. Colebrooke "Sought."

7. Ch. XXVIII 21-22. *Dhâreśvara* does not properly quote the text of *Goutama* nor has he properly interpreted it. The text properly reads thus: "पिन्डगोत्रसिबन्धा रिक्तं भजेत् स्त्री वाजपत्यस्य (21), वीजं वा लिखेत् (22)." There are two *Sūtras* combined here. *Sūtra* No. 21 says "Let kinsmen related by piṇḍa &c. take the heritage, or the widow of one dying without issue. The *Sūtra* (22) says "Or she may seek to raise up issue to him." But what *Dhâreśvara* does is that he stops after the classes of kinsmen &c., and begins with the 'widow' and joins that portion of this *Sūtra* to the next, converting the whole into a conditional clause. *Vijnāneśvara* has interpreted *Goutama*'s text properly further on (p. 1075 ll. 3-7) while he is refuting *Dhâreśvara*'s position.

“Let relations connected by *pinḍa*<sup>1</sup>, by family<sup>2</sup> name or by “descent<sup>3</sup> from a common patriarch, or the wife, share the heritage; or the widow of a childless man may seek (to raise up) “offspring (to him).” (9) The meaning of this (text) is this: ‘Persons connected by *pinḍa*, by family name, or by descent from a common patriarch, share the effects of one leaving no male issue; or his widow takes the estate, provided she seek progeny.’ (10) Manu<sup>4</sup> also: “He

1. Colebrooke translates *pinḍa* “allied by the funeral oblation.” This translation may be in accordance with the view prevailing in Bengal under the school of Jimuta Vāhana. But the *Mitākṣharā* view of a *Sapinḍa* is quite clearly & distinctly mentioned by *Vijñāneśwara* in the commentary on Yājñavalkya I. 52 beginning with समानः पिन्ड एकः यस्याः सा &c. (Collections *Mitākṣharā* p. 12 ll. 21-22. Tr. p. 146 ll. 14-16. See the judgment of West J. in *Lallumbhai vs Mankuvarbai* 2 Bom.388 at p.423, and the translation under the *Mitākṣharā* would be “connected by particles of blood” or under *Dāyabhāga* “connected by funeral oblations.”

2. *Gotra* is the general family name of the original *R̥shi*.

3. *Pravaras*. The most remote but nearer ancestors. They are the patriarchs nearer in degree than the originator of the *Gotra*, and on account of whom a connection is established between persons having the same *Gotra*. Each *Gotra* has at least two or three *Pravaras*, and persons belonging to different *Gotras* may not be regarded as absolutely unconnected if they have any of the *Pravaras* in common among themselves *e. g.* of two men belonging respectively one to the Jamadagni (जमदग्नि) and the other to the Gotama (गौतम), the *gotras* are different, and as such they are not connected. But, the *Pravaras* of Jamadagni are, Jamadagni, Aurva and Vasishṭha; & those of Gotama are Gotama, Vasishṭha and Bārhaspatya; thus these two persons have one *pravara* originally Common *i. e.* although they are not connected by reference to the प्रवर्तकमुनि or the ancestor who started the particular family of each, still they are connected by reference to the *R̥shis* next in descent. They have been defined as ‘गौत्रप्रवर्तकमुनिव्यावर्तको मुनिगणः,’ see the commentary *Bālabhāṭṭi* on Yājñavalkya I. 52-53 and *Mitākṣharā* thereon. (Collections pp. 177-190.)

The *Gotra* indicates the *R̥shi* who starts the family, while the *R̥shis* born in the same family later on, and nearer in degree but of less importance than the originator of the family are indicated by the *Pravaras*—note the following remark of *Medhātithi* on *Manu* Ch. III. 5. p.194.ll.7-8 “ऋषिर्वसिष्ठादिराद्यो वंशस्य कर्ता । तद्वोत्रास्तनः प्रवृत्ताः प्रवरा इति । तत्पुत्रपौत्रास्तपोविद्यायनिशययुगयोगेन प्रख्याततमः ”

Tr. “A *R̥shi* such as Vasishṭha and the like is the maker or starter of the family. Persons born from him and having the same *Gotra*, such as his sons and grandsons, and most renowned on account of their possessing the highest qualification of austerities and learning are known as *Pravaras*. ”

4. Ch. IX. 146.

- "who takes care of his deceased brother's estate, and<sup>1</sup> his widow, such a  
 "one after raising up a son for his brother, shall deliver that property  
 "even to that (son)<sup>2</sup>". By this text he indicates this : that even when  
 5 a brother who was separate in estate dies, his wife's claim to his  
 estate is only through<sup>3</sup> an issue, and not otherwise. So in the case  
 of undivided property likewise (the same Author<sup>4</sup> says) : "Should a  
 "younger brother have begotten a son on the wife of the elder  
 "brother, the division must then be made equally: thus is the law  
 "settled."<sup>5</sup> (11) Vasīṣṭha<sup>6</sup> also by the text: "An appointment shall  
 10 "not be made through covetousness for the estate", forbidding an  
 appointment to raise up issue to the husband if sought through  
 covetousness for the estate, thereby intimates that the widow's claim  
 to the estate is only through an appointment, and not otherwise.  
 (12) in the absence of an appointment, however, a widow is only  
 15 entitled to a bare maintenance, *vide* the text<sup>7</sup> of Nārada: "They  
 "should make provision for the maintenance of their wives till their  
 "death." (13) The same, it is pretended,<sup>8</sup> will be declared later  
 on by the Lord of the Yogis:<sup>9</sup> "And their childless wives, conducting  
 "themselves aright, must be supported; but such as are unchaste should  
 20 "be expelled, and so, indeed, those who are perverse." (14) Moreover,  
 since the wealth of a regenerate man is designed for religious uses, the

1. *Cha* (च) is found in the text of *Manu*, and it seems was also the reading in the copy adopted by Mr. Colebrooke. It is better reading than *uā* (वा) - 'or'. *Kulluka* in his gloss on this verse adds that this text has a reference to the estate of a separated brother as the one in IX. 120 obviously contemplates a joint-estate. (see also *Subodhini* p. 62. l. 25 & *Bālabhāṭṭi* p. 190. l. 31).

2. *i. e.* the son so begotten.

3. 'Through' - *Dvārā* (द्वारा) *i. e.* she has no independent right in herself.

4. *i. e.* *Manu* Ch. IX. 120. (see note above).

5. *i. e.* the objector says that even *Manu* has laid down the adjustment of the conflicting texts.

6. Ch. XVII. 65.

7. Ch. XIII. 26. (see above p. 1068. ll. 11-14).

8. *Kīla*—This particle is used in many senses. Here it indicates disapprobation.

The same sense is maintained in the next quotation of an unnamed writer whom *Vijñāneśvara* refers to as *Kenāpi* (केनापि)—which the author of the *Subodhini* notes as 'an indication of disrespect'; (p. 52. l. 29. also *Bālabhāṭṭi* p. 191. l. 8).

9. *i. e.* *Yājñavalkya*. II. 142.

succession of women to such property is unfit; because they are not competent to the performance of religious rites : accordingly it has been declared by some<sup>1</sup> author: "wealth was produced for the sake of "solemn sacrifice ; and they, who are incompetent for the celebration "of these (rites), are not entitled by any property<sup>2</sup>, but (may) receive "food and raiment. Wealth has been ordained for sacrifices. There- "fore it should be allotted to places concerned with religious duties "and not to women, fools or the irreligious."<sup>3</sup>

5

(15) That<sup>4</sup> is wrong ; for authority to raise up issue to the husband is neither specified in the<sup>5</sup> text, "The wife, the daughter &c." nor is it suggested by the premises.<sup>6</sup> Besides, it may be here asked, is the appointment to raise up issue a reason for the widow's succession to the property, or is the issue borne by her, the cause of her

10

1. Name unknown. See note above. *Bâlabhāṭṭa* remarks that by the use of the expression *Kenâpi*, disrespect for the writer is indicated ; and it should be noted that therefore the name of the writer has not been mentioned. (p. 191. l. 13).

2. The word in the text is *Rikṭha* which means heritage, or inheritance.

3. Here ends the summary of *Dhârṣvara's* argument.

The argument of *Dhârṣvara* in short is this : (1) The wife's capacity to take her husband's estate depends on her desire to beget issue for him and in support of this he cites *Mamu*, IX. 185, 146, 120, *Gautama* Ch. 28/22-22, *Vasīṣṭha* 17-15, *Nârada* 13-26, and (2). As the wealth of the twice-born is intended for the performance of religious rites, and as women are incompetent for the same, the devolution of wealth upon the wife is conditional as above.

4. *Vijñânṣvara's* refutation of it commences from "That is wrong." He does it in several ways, taking each text and explaining its meaning until he arrives at the conclusion at the end of his argument viz. "Of a man dying without issue separate and unreunited, his married wife, leading a continent life, takes the whole estate" (see further on page 1087 ll. 9-11).

For a lucid analysis of the whole position see *Subodhini* (63. ll. 9-18 Tr. p. 157 ll. 30-34)—"Indeed for the succession of a wife to her husband's estate, is the appointment the cause, or, the issue begotten thereby, or is it a special reason, and again of the special reason, is appointment the principal cause or the issue or are both of equal importance—these are the six ways in which this question may be looked at, &c." see Tr. P. 157 ll. 30-34.

See the observations of Muttuswamy Aiyar J. in *Mari vs. Chinnammal* 8. Mad. at, pages 118-127, and also *Krishna vs. Sami* 9 Mad. at p. 74 &c.

5. i. e. of Yājñavalkya II. 135 (p. 1065 above).

6. i. e. Nor it is pertinent or relevant.

succession ? Of these, if the appointment alone be the reason, it would follow that, even without having borne a son, she has a right to the estate; and the right of the son (thus<sup>1</sup>) born to the estate would not follow. On the other hand if the offspring alone be the cause (of her claim), then in that case as the son alone has a right to the estate, the law (of inheritance) should not be stated beginning "with the wife &c."

(16) As to what is said that women have a title to property, either through the husband, or through the son, and not otherwise, that also is wrong; for it is inconsistent with the following<sup>2</sup> and other similar texts,

*viz.* "What was given before the nuptial fire, what was presented in the bridal procession, what was given in token of affection, what was received by the woman from her brother, her mother, or her father, are denominated the sixfold 'property of a woman.'

(17) Moreover, on failure of sons of all descriptions, the law (of succession) has been stated commencing with "the wife, daughters &c." Now here, by affirming the right of a widow, who<sup>3</sup> has been appointed to raise issue, the right of the *kṣhetraja* son himself to succeed to the estate is virtually affirmed. But that had already been declared<sup>4</sup>: and therefore the wife ought not to be mentioned in the law of succession to (the estate of) one who leaves no male issue.

1. Colebrooke translates "subsequently produced"; but the expression in the text is *Upannasya* which would mean "born." Having regard to the context there would be much difference in meaning in the two interpretations. As the assumption would concede to the widow the right of succession on the ground of appointment, she must be one who has already taken a step in the matter of the appointment, and who would be anticipating the birth of the issue. And her taking a step in the matter of begetting a son for her husband would be a condition precedent for the estate to vest in her. See the answer in refutation by Vijñāneswara *viz.* नियुक्ताया घनसंबन्धं वदता &c.

2. Manu Ch. IX. 194.

3. In the original, the expression has been used as qualifying the widow—a sort of a condition precedent to her succession appears to have been laid down. It means—"by declaring the right of succession of a widow on the ground of her appointment &c."

4. The right of succession of sons of all sorts has been independently treated in a separate place and in that connection the right of succession of the *Kṣhetraja* son also has been examined (see p. 1046 l. 15 &c. above). It would therefore be inconsistent to suppose that the author wanted to treat the right of that son again here. (See Bālabhāṭṭi 191-192 and *Subodhini*. 92.)



(18) But, it is alleged, the right of the widow, who is authori-

The interpretation  
of Gautama's text  
examined and proved  
to be erroneous.

zed to raise up issue to her husband, is deduced  
from the text of **Gautama**<sup>1</sup>: "Of a childless man,

"let kinsmen, connected by *pinda*<sup>2</sup>, by family

"name, or by descent from the same patriarch

"share the heritage; or the widow; or she may

"seek to raise up offspring (to him)". This too is erroneous; for it

cannot be inferred as the meaning of this (text) that, "if she seek to

"obtain offspring, (then alone) she may take the goods of a childless

"man", but that, "persons connected by *pinda*, by family name, or by

"descent from the same patriarch, share the effects of one who leaves no

"issue; or his widow takes the estate; and such widow may either seek

"to obtain progeny, or may remain chaste."<sup>3</sup> This is only<sup>4</sup> an alternative

course prescribed for (being adopted or not by) her. In other words,

an alternative cannot be converted into a conditional. For the particle

*vâ* 'or' denoting an alternative course, does not convey the sense of

*yadi* 'if'. Moreover, it is fit, that a chaste wife alone should succeed

to the estate, and not one who has sought appoint-

\* Page 93.

ment, as she has been censured by the law as well

A continent wife  
preferred.

as by (the opinion of) the people. The succession

of a chaste woman alone has been expressed in

the text<sup>5</sup>: "The widow of a childless man keep-

"ing unsullied her husband's bed, and persevering in religious

"observances, shall herself present his funeral oblation, and also

"obtain his entire share."

And an (authority to raise up issue by) appointment has been

*Niyoga* condemned

condemned by **Manu** by the following<sup>6</sup>: "By

"regenerate men a widow must not be authorized

1. Ch. XXVIII. 21-22. note above p. 1069; see *Vedammal* vs *Vedanavaga*  
*Mudliar* 31 Mad. 100 at p. 106 *Ganapat* vs *Tulsiram* 36 Bom. 88-90=13 Bom.  
L. R. at p. 862.

2. See note above on this at p. 1071.

3. संयत्ता—continent, leading a strictly chaste life.

4. *i. e.* two modes of conduct are suggested to her. She may either seek  
male issue by means of appointment, or she may remain chaste (see *Bālabhāṭṭi*  
p. 192 l. 30; *Subodhini* p. 64 ll. 5-7.). Colebrooke translates, "This is an  
instruction to her &c."

5. of *Vṛddha-Manu* see p. 1069 ll. 4-7 above.

6. Ch. IX. 64.

“to (conceive by) any other (than her husband); for they who  
“authorise her to (conceive by) another, violate the enternal law,”  
and similar other texts.

- (19) As for the text of **Vasiṣṭha**<sup>1</sup>: “An appointment shall not  
5 “be made through covetousness for the estate.” This also must be  
interpreted to mean that, “if the husband die unseparated from his  
“co-parceners or re-united with them, she has no right of succession to  
“the estate; and therefore an appointment to raise up issue must not  
“be resorted to for the sake of securing the succession to her offspring.”  
10 (20) As for the text of **Nārada**<sup>2</sup>: “And they shall allow maintenance for  
“his women till the end of their lives,” since in the text<sup>3</sup>: “The shares  
“of re-united brethren are considered to be exclusively theirs,” the re-  
union of co-parceners had been premised, that too<sup>4</sup> must be understood  
as only suggesting a maintenance for the childless women of these<sup>5</sup>.  
15 Nor is tautology to be objected to the text<sup>6</sup>: “The share of re united  
“brethren &c.” on the ground that the previous passage<sup>7</sup> viz. “Among

1. Ch. XVII. 65. 2. Ch. XIII. 26. 3. of Nārada Ch. XIII. 24.

4. i.e. the text of Nārada in Ch. XIII. 26. 5. i.e. of the re-united co-parceners.

6. of Nārada Ch. XIII. 24. see note below. The two passages are not  
tautologous; because, while the first declares that the *Strīdhana* property of  
women should be exempted from partition, the second lays down a clearly separate  
rule whereby provision for the maintenance of the women of such a member is  
made. There would therefore be no fault of tautology. (see Bālabhāṭṭi p. 194  
l. 10 and Subodhini p. 94 ll. 12 and 13.)

7. Nārada XIII. 25. The full texts are as follows :—

“संस्तृष्टानां तु यो भागस्तेषामिव स दृश्यते 24

“भ्रातृणामप्रजाः प्रेयाः कश्चिद्व्यवजेत्तु वा । विभजेरन् धनं तस्य शेषास्तु स्त्रीधनं विना ॥ 25

“मरणं चास्य कुर्वीरन् स्त्रीणामा जीवनक्षयात् । रक्षन्ति शय्यां भर्तुश्चैवाच्छिन्दुरितरात् च ॥ 26

Tr. “That portion which belonged to re-united coparceners is declared to be  
absolutely theirs.” 24.

“If among several brothers one should die childless, or become a religious  
ascetic, the others shall divide his property, excepting the *Strīdhana*.” (25)

“They shall make provision for his women till they die, in case they remain  
faithful to the bed of their husband. Should the women not (remain chaste) they  
must cut off that allowance” 26. [Sacred Books of the East Vol. XXXIII. Pages  
195-196].

See *Pannappa vs Pappuwayyengar* 4 Mad. at pp. 31 and 32, and *Subramanya  
Pandya vs Siva Sabramanya Pillai* 17 Mad. at pp. 326-327 where, referring to

(Contd. on next page)

“brothers, if any one die without issue &c.” (already) had a reference to re-united members. For, by this explanation of what had been said before, women’s separate property is exempted from partition, and a mere maintenance for their<sup>1</sup> widows is at the same time ordained. (21) As for the passage<sup>2</sup>: “And the childless wives of these &c.”, that will be explained (further on) as having a reference to the wife of an impotent man and such others. 5

(22) As for the argument, that the wealth of a regenerate man is designed for a sacrifice<sup>3</sup> and women not being competent to the performance of a sacrifice, their succession to the property is unfit, that is wrong. For if every thing which is wealth be intended for sacrificial purposes, then charitable purposes, burnt offerings, and similar matters, must remain unaccomplished. Or again, if it be alleged that since sacrifice here signifies religious<sup>4</sup> duty in general, and 10

(Contd. from last page)

this and other passages the court deduces the right of survivorship by which under the Mitākṣharā the surviving members of a joint family become entitled to an estate which would have become the absolute property of the deceased member, had a partition been made during his life-time.

It may be noted that the *Dâyabhāga* does not interpret the term “woman” used in this passage as indicating a wife but women actually espoused, but not having the rank of a wife, see *Dâyabhāga* Ch. XI. sect. 1 § 48 also 4 Mad. at p. 32. A distinction among wives by marriage e. g. महिषी, भोगपत्नी &c. will be found to have been referred to in *Ramasami vs Sundaralingasami* 17 Mad. 422 at p. 437 and *Brindavana vs Radhamani* 12 Mad. 72.

1. i. e. of the male members of the family. 2. Yājñavalkya II. 142.

3. Colebrooke translates “for religious uses”; but the word in the original is (यज्ञ) *Yajña*, and in the discussion which immediately follows in the Mitākṣharā the author has used this word in contradistinction from religious purposes generally.

4. i. e., the word sacrifice includes by implication all religious purposes in general; उपलक्षण is that which implies something which has not been actually expressed, implication of something in addition, or any similar object where only one is mentioned “स्वप्रतिपादकत्वे सति स्वेतरप्रतिपादकत्वम्.”

The three words (यज्ञ, दान and होम) *Yajña* or *Yāga* (sacrifice), *Dāna* (donation), and *Homa* (burnt offering) are explained in (Subodhini p. 64) thus:—The relinquishment of a thing in favour of a deity is a *Yāga* or consecration, the same object terminating with an offering in the fire is a *homa*. Bālabhāṭṭa adds a further technical distinction—when the offering is with the accompaniment of वषट् it is *Yāga*; without it, it is a simple *Homa*. And a *Dāna* or ‘donation’, or gift, is that by which the proprietary right is created in another by terminating one’s own right of property in the thing transferred.

- charitable donations, burnt offerings and the rest are acts of religious duty, the applicableness of wealth to those uses is uncontradicted; thus then the other<sup>1</sup> two objects of life *viz.* *Artha* and *Kāma* which (also) are to be secured by wealth would remain unaccom-
- 5 plished; and in that case there would be an inconsistency in the following passages of *Yājñavalkya*, *Gautama* and *Manu viz.*, "One<sup>2</sup> should "not neglect religious duty, wealth or pleasure (such as he can accom-
- 10 "plish) according to his capacity;" so<sup>3</sup> : "To the utmost of his power, "a man should not let morning, noon or evening be fruitless in res-
- "pect of religious merit, wealth and pleasure" and also<sup>4</sup> : "These (*i. e.* "the organs<sup>5</sup> of perception) cannot effectually be so restrained by "abstinence."<sup>6</sup> (23) Moreover, if wealth be designed for sacrifices (only) the argument would be reversed, by which it is shown, that the

1. The four objects or purposes of a man's life (पुरुषार्थस Puruṣhārthas) in this world are (1) *Dharma* (धर्म) religious merit, (2) *Artha* (अर्थ)—attainment of riches or worldly prosperity, (3) *Kāma* (काम) desire for sensual enjoyment, and (4) *Mokṣha* (मोक्ष), final emancipation or deliverance of the soul from recurring births.

These are the four objects which a man has to accomplish during his life in this world. And the objector says that if all the wealth were appropriated towards *Dharma* only, the other two *viz.* *Artha* and *Kāma* would remain unaccomplished, and thus there would be a breach of the supreme duty of attaining all the four objects of life.

2. *Yājñavalkya* Âcārādhyāya 115 p. 310 above. The passage in the text of *Yājñavalkya* reads differently from the quotation here given by *Vijñāneśvara viz.* धर्मार्थकामान्दे काले...यथाक्रिया. Tr. "should not neglect religious duty &c. in their proper season." This is made further clear in the passage of *Gautama* next cited, which when freely translated would read thus : "Let him not pass idly (any part of the day, be it) morning, midday, or evening; (but) according to his ability (he shall make each useful) by the acquisition of spiritual merit or of wealth, and by taking his pleasure." And generally, the mornings are prescribed for the first and the last *i. e.* (*Dharma* & *Mokṣha*), the midday for the *Artha*, and evenings for the *Kāma*.

3. *Gautama*. Ch. IX. 46.

4. *Manu* Ch. II. 96.

5. These organs are enumerated in Verses 89, 90, 92 of Ch. II. by *Manu*. In Verse 91 ten of these are classified into two groups *viz.* "Organs of sense" (बुद्धीन्द्रियाणि), "and organs of action" (कर्मन्द्रियाणि), and verse 92 declares mind as "the eleventh organ, which by its quality belongs to both kinds." The meaning is, that these organs cannot be so effectually restrained by a course of abstinence as they would be by a sense of satiety generated by enjoying them.

6. Non-use (असेवया). See note above.

careful preservation of gold under the text<sup>1</sup> : “Let gold be “preserved,” is intended not for religious ends but for human purposes. (24) Moreover, if the word sacrifice import religious duty in<sup>2</sup> general, the succession of women to estates is most proper, since they also are competent to the performance of auspicious<sup>3</sup> and conservatory acts. 5  
(25) As for the last text which declares the dependence of women : “A woman does not<sup>4</sup> deserve independence,” let there be dependence, but where is the objection for the acceptance of property ?

(26) How then are the texts such as<sup>5</sup> : “Wealth was produced for the sake of (the performance of) solemn 10  
The Answer. “sacrifices” and others to be interpreted ? The answer is that that text is to be interpreted to mean that wealth which was obtained<sup>6</sup> for the (express) purpose of (performing) a sacrifice must be appropriated exclusively to that purpose even by sons and other successors, as it has been declared to be an offence even in the 15  
case of sons and other successors, generally<sup>7</sup> in the text<sup>8</sup> : “He, who “having received articles for a sacrifice, disposes not of them (for “that purpose) shall become a kite or a crow.”

1. This is from the 12th Topic (*Adhikaraṇa*) of the 4th Section (*Pāda*) of the 3rd Chapter (*Adhāyaya*) of Jaimini. The passage in full from the Veda is as follows:— द्रुवर्णोऽस्य प्रातुष्याः तस्मात्सुवर्णं हिरण्यं भार्ये । सुवर्णं एव भवति । Tait: Br : II. ii. 4. 6. This passage enjoins the careful preservation of gold lest it lose its brightness and be tarnished. The question raised on it is, whether the observation of the precept be essential to the efficacy of sacrifice or serve only a human purpose; and the result of the reasoning is that the precept refers to the person and not to a sacrifice. *Vijñāneśvara* says that this demonstrated conclusion or *Siddhānta* (सिद्धान्त) would be contradicted, if it were assumed that gold is intended only for a sacrifice: (see Subodhini pp. 65, 66. Tr: p. 169-163. and Bālabhāṭṭi p. 195. Ānandāśrama No. 24 p. 161).

2. See note above p. 1077 n. 4.

3. इष्टापूर्तं &c. see note on p. 1014 n. 4 above.

4. अर्हति. *i. e.*, is not fit to be independent. See *Nathubai vs Jawher* 1 Bom. 121 at pp. 123 and 124, as regards the capacity of a woman to hold property and to enter into a contract without the husband's consent or ratification. But it would be otherwise if the property be immovable, or be a property producing a periodical income. See *Bhau vs Raghunath* 30 Bom. 229 at pages 239-240.

5. See above p. 1073 ll. 3-8.

6. Acquired *i. e.* in charity *e. g.* by donation &c. : see Bālabhāṭṭi p. 196. ll. 5-7. Subodhini p. 96. ll. 6-8.

7. *i. e.* without particularisation (अविशेषेण). 8. See *Mamu* Ch. II 25.

(27) Even as to what has been said by **Kātyāyana**: "Heirless property goes to the king, deducting however a subsistence for the females as well as for the funeral charges; but the goods belonging to a venerable priest<sup>1</sup> let him bestow on venerable priests," *i. e.* heirless property or wealth which is without an heir to succeed 'goes to the king' *i. e.* becomes the property of the sovereign 'deducting, however, a subsistence for the females as well as for the funeral charges'; it means that after excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral charges such as the funeral repasts and other obsequies in honour of the (deceased) owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a 'venerable priest,' deducting, however, a subsistence for the females as well as the charges of obsequies, 'Let him bestow on a venerable priest.'" (28) But even this relates to women<sup>2</sup> kept in concubinage, for the term employed is "females."<sup>3</sup> The text<sup>4</sup> of **Nārada** likewise relates to women of the harem, since the word used is women<sup>5</sup>. "Except the wealth of a *Brāhmaṇa*; but a king, who is attentive to the obligations of law<sup>7</sup> should allot a maintenance to the women of such a person. Thus has been declared the law of inheritance." (29) But since the term *patni* is here<sup>8</sup> employed, the succession of a wedded

1. A *Śrotriya* is a learned *Brāhmaṇa*. "One is a *Brāhmaṇa* merely by birth, he is called a *dwija* after the performance of rites, he becomes a *vipra* by learning, and is designated a *Śrotriya* when he has all the three."

"जन्मना ब्राह्मणो ज्ञेयः संस्कारैर्द्विज उच्यते । विद्यया याति विप्रत्वं त्रिभिः श्रोत्रिये उच्यते ॥"

It is such a one whose wealth has been unanimously declared to be unfit to be taken by the king.

**Bālabhāṭṭa** reads as *Śrotriyaśyopapādayet i. e.* "should devote it for the use of" a *Śrotriya* *Brāhmaṇa*.

2. अवरुद्धास्त्रीविषयम्. See further on Yājñ. II. 290. and the *Mitākṣharâ* thereon.

3. The word is *Yōshit* which is derived from युष् 'to serve'.

4. Ch. XIII. 52.

5. The word is *Stri*. It is derived as स्त्रियायति गर्भोऽस्याम्. The text of **Nārada** refers to women generally.

6. The last portion of verse 54 is "In default of all, that (wealth) goes to the king." and V. 55 begins with the exception to this last clause.

7. धर्मपरायणः—*i. e.* intent on following the dictates of *Dharma*.

8. Here *i. e.* in Yājñ. II. 135 see pp. 1065 l. 9 above.

wife, who is chaste, is not inconsistent with those passages.  
(30) Therefore it is established as the right interpretation ( of this passage ), that when a man who was separated ( from his co-heirs ) and not re-united ( with them ) dies leaving no male issue, his wife takes the estate in the first instance. For<sup>1</sup> partition has been discussed,<sup>2</sup> and re-union is to be subsequently considered.

( 31 ) It must be understood, that the explanation proposed by Śrikara and others restricting ( the widow's succession ) to a small portion of property is refuted by this<sup>3</sup> : For even where there are legitimate sons it is provided, whether the partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the sons : " If<sup>4</sup> he " make the allotments equal, his wives must be made partakers ' of " equal portions.' " And again : " Of<sup>5</sup> heirs dividing after ( the death of ) " the father, let the mother also take an equal share." Such being the case it is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue.<sup>6</sup>

( 32 ) But if it is argued that under the terms of the texts ( above cited ): " his wives must be made partakers of equal " portions " and : " Let<sup>4</sup> the mother also take an " equal share," a woman takes only as much wealth as is sufficient for her maintenance; that is wrong. For the words *amśa*, ' share or portion ', and *sama*, ' equal ', would thereby be deemed meaningless.

( 33 ) Or again it may be argued that if the wealth be great, she takes precisely enough for her subsistence, but if small, she takes a share equal to that of a son : that too would be wrong ; for variable-

1. What the author means is this : that the widow succeeds to all description of property, except those which form the subject of partition in verses 114-126 above, and also those which form the subject of re-union in verses 138 & 139. *Jasoda Koer vs Sheo Prasad Singh*, 17 Cal. 33 at p. 36.

2. From Verse 114 to 127 above.

3. *i. e.* by the argument which follows.—See Bālabhāṭṭi p. 197, l. 15 and Subodhini p. 66 ll. 25 etc.

4. Yājñ. II. 115, p. 997, ll. 14-16. 5. Yājñ. II. 123, p. 1027, ll. 11-12.

6. For a lucid explanation of this passage see Subodhini p. 66. lines 25 to 32 and p. 67, ll. 1-2 and Bālabhāṭṭi p. 197.



ness<sup>1</sup> in the precept will be the consequence. Since if the estate be considerable the texts (above cited) viz: "his wives must be made partakers of equal portions" and: "let the mother also take an equal share", would be construed, regard being had to another text<sup>2</sup> also which lays down  
 5 a bare maintenance, to suggest a share adopted for a bare support. But if the estate be inconsiderable, the same passage would (have to be construed to) indicate the assignment of a share equal to a son's.

(34) Thus, in the instance of the *Châturmâsya*<sup>3</sup> sacrifices, in the disquisition (of the *Mîmâṃsâ*) on the passage  
 10 An objection. *Dwayoh pranayanti*, where it is maintained by the opponent that the rules for the preparation of the sacrificial fire at the *Soma-Yâga* extend<sup>4</sup> to these sacrifices, and as a consequence of it, the injunction "not to construct a Northern Altar (*Uttara Vedi*)  
 15 "at the *Vaiśvadeva* sacrifice nor at the *S'unâsiriya* sacrifice, must be "understood as a prohibition of such altar<sup>5</sup>; but it is answered by an "advocate<sup>6</sup> of the right opinion, that it is not a prohibition<sup>7</sup> of that  
 The answer. "altar at the first and the last parts as suggested  
 "by extending to these sacrifices the rules for  
 "preparing the sacrificial fire at the *Soma-yâga*, but an exception to

1. It is a rule that "a single sentence once uttered carries only one meaning" सङ्कदुच्चरितः शब्दः सङ्कदेवार्थमवगमयति, and if the texts cited above were to be interpreted to have one meaning in case where the estate is large, and quite another meaning where the estate is small, that would be contrary to the universal rule of interpretation stated above i.e. it would lead to the वाक्यभेद दोष. (See Subodhini p. 97. ll. 5-10. Bâḷambhaṭṭi p. 197 ll. 26-30).

2. Viz. Nârada Ch. XIV. 26. "And should provide for the maintenance of his women till their death." (See p. 236 l. 21 above) भरणं चास्य कुर्वीरन्स्त्रीणामा जीवनक्षयात् (Subodhini p. 67 l. 9. Bâḷambhaṭṭi p. 197 l. 29).

3. *Châturmâsya* is the name of the sacrifice performed every four months viz: at the beginning of *Kârtika*, *Fâlguna*, and *Âshâdha*. It consists of four parts in order viz: (1) The *Vaiśvadeva*, (2) the *Varuṇa-Praghâsa*, (3) the *Sâkamedha*, and (4) the *Sunâsiriya*.

4. An *Atideśa* (अतिदेश) is an extended application, or an application by analogy. See note 4 on page 1077 above. The argument here is that the general practice prevailing at the *Soma-yâga* may, by analogy, be applied here.

5. i.e., the Northern altar.

6. Mark the expression. It is the position of the follower or apologist of the right opinion, and not the right opinion itself, which is given at the end of the discussion.

7. *Pratishedha*—a prohibition, a cutting down, delimitation.

“the express rule ‘prepare an *Uttara-vedi* at this sacrifice,’” bringing in the construction of the *Uttara-vedi*, it is urged in reply by the opponent, that (even then) variableness in the precept must follow,

An objection again.

since the same precept thus authorizes the occasional construction of the altar, with reference to

a prohibition of it, at the first and last of the (four) periods of sacrifice, and commands a construction of it at the two middle periods independently<sup>1</sup> of any other maxim. But it is finally shown as the

Final conclusion.

right doctrine, for the purpose of obviating<sup>2</sup> the objection of ‘variableness in the precept,’ that the

prohibition of the northern altar at the first and last of the periods of sacrifice is a *Nityānuvād* and that regarding the injunction *Dwayoh<sup>3</sup> pranayanti* as an *Arthavāda<sup>4</sup>*, the injunction “prepare the *Uttara-vedi*

1. i. e. without reference to any particular maxim, but quite by a reasoning on general principles.

2. Mark the word *bhayaṭ*—apprehension. It is such niceties very critically conceived and expressed which demonstrate the high position of *Vijñāneśvara*. Even the remote apprehension of a variableness in the precept is to be avoided, and for this, any other minor blemish may be accepted.

3. अनुवाद an explanatory repetition of, or reference to, what is already mentioned; a supplementary repetition as distinguished from an injunction or *Vidhi*.

अर्थवाद is a declaratory assertion, whose purport is either praise or blame (प्राशस्त्यनिन्दान्यतरपदं अर्थवादः). *Arthavāda* passages are of two kinds, being either complements of *Vidhi* passages, or complements of *Niṣhedha* passages. It is again of three kinds viz: *Guṇavāda*, *Anuvāda* and *Bhūtārthavāda*.

विरोधे गुणवादः स्यादनुवादोऽवधितिः । भूतार्थवादस्तद्वानादर्थवादस्त्रिधा मतः ॥

4. The above discussion is based on what is known as the “*Dwayoh-pranayanti*” Maxim of the *Mīmāṃsā*. For a lucid exposition of the passage in the text of the Maxim and its bearing on the text, see Subodhini pp. 67-68 and Bālabhaṭṭi which, as usual, elaborates the points in the Subodhini. The following, in short is the summary of the discussion.

**General remarks:** The two sacrifices referred to in this discussion are the *Soma yāga* and the *Chāturmāsya*. The *Chāturmāsya* sacrifice has been explained in note 3 on page 1082 above. The principal sacrifices are the *Soma*, the *Darśa-Pûrnamāsa* and the *Agnihotra*; these are known as the *Prakṛtis* (प्रकृति), or Principal Sacrifices. The *Chāturmāsya* is a ‘special sacrifice’ and falls under the *Darśa-Pûrnamāsa*. Such a one is called a *Vikṛti* (विकृति), or ‘a special rite.’

*Praṇayanam* is the carrying of the fire from the *Gârhaspatya* altar to the *Āhavanîya*.

( Continued on next page )

“at this sacrifice.” Commands the construction of the northern altar at the two middle periods only viz. the *Varuṇapraghâsa* and *S'âkamedha*.

(Contd. from last page)

Lastly, the construction of the ‘Northern altar’ has been ordained in the *Soma* Sacrifice only, and not in the *Darśa Pûrṇamâsa* sacrifice.

These are some of the general rules of practice ordained at the sacrifices.

Then there are the following texts of the *Veda*, in reference to the *Châturmāsya* sacrifice, viz.,

(१) उपात्र वपन्ति ‘*Upa atra vapanti*,’ Tr. “In this (i. e. the *Châturmāsya* sacrifice) the Northern altar is to be established.”

(२) न वैश्वदेवे उत्तरवेदिमुपकिरन्ति न ह्युनासीरिये—‘*Na Vaiśvadeve uttaravedimupakiranti na Śunāsīriya*’ Tr. “The Northern Altar is not to be established either in the *Vaiśvadeva*, or in the *Śunāsīriya* portion.

(३) उरू वा एतौ यज्ञस्य यद्गृहप्रवासः शाकमेधश्चेति द्वयोः प्रणयन्ति—‘*Urû vâ etau Yajñasya yat Varuṇa-Praghâsaḥ Śâkmedhascheti Dwayoh Prṇayanti*.”

Tr. “The two legs (i. e. mainstay), of the *yajña* are the *Varuṇa-Praghâsa* and the *Śâkamedha*; the two must have fire kindled in them.

Taking these texts and having regard to the general rules of sacrifice according to which the *Prṇayana* in the case of the *Soma* alone has been laid down in the *Śruti*, while there is no provision for the same in the case of the *Darśa-Pûrṇamâsa*, the objector or *Pûrva-Pakṣha* says that the procedure to be adopted for a *Prṇayana* should be that prescribed for the *Soma* inasmuch as it is स्वर्मेक and not the अध्वमेक one in the case of the दर्शपूर्णमास.

Of the three texts quoted above, No. 1 lays down that the ‘Northern Altar’, which is invariably connected with fire-kindling, should be consecrated in the *Châturmāsya Yâga*. This is in the nature of a general rule or *Vidhi* which has been cut down by No. 2, according to which the ‘Northern Altar’ is not to be consecrated either at the first or the fourth quarter of the *Châturmāsya* sacrifice, viz. in *Vaiśvadeva* and *Śunāsīriya*.

No. 3, has some praise for the 2nd and 3rd quarters viz. *Varuṇa-Praghâsa* and *Śâkamedha*, and then it says that the fire-kindling should take place in the two (i. e. these two). Shortly stated the position is this :

(1) The Northern Altar should be established.

(2) But not in the case of the first or the fourth quarters.

(3) In the 2nd and 3rd quarters fire should be kindled.

These rules have been construed to yield the following plain result. The first is a “general rule” or a *Sâmānya Vidhi*. The second is an exception to it and the third is a necessary deduction following as the combined result of Nos. (1) and (2). Further, the third is in the nature of an *Arthavâda* showing the reason why the second and the third are not subjected to any exception in respect of fire-kindling.

(Contd. on next page)

( 35 ) Again as to the doctrine, that from the text of **Manu**<sup>1</sup>: ‘ the  
“father shall take the inheritance or the brothers.”  
Another position  
based on certain  
texts. “Of him who leaves no male issue,” as well as  
from that of **Śaṅkha** “The wealth of a man, who  
“departs for heaven, leaving no male issue, goes  
“to his brothers ; in their absence his parents shall take, or his eldest  
“wife.” The rule is deduced that the wealth of a man leaving no male  
issue goes to his brothers ; and from the text<sup>2</sup>: “ Let them provide for  
“the support of his women for life,” it also becomes established that the  
wife obtains ( as much ) wealth ( as is ) sufficient for her maintenance. 10  
This being so (it follows that) if a rich man die leaving no male issue,

( Contd. from last page )

The above construction harmonises the three texts and does not introduce any  
conflict such as would result in an *option*.

But the opponents argue thus : We concede that the first is a general rule or  
*Vidhi*, and the second is a ‘special negative *Vidhi*’ by way of an exception. But  
the exception is as regards the “Northern Altar,” and not as to the kindling of  
fire which may be kindled under the general procedure laid down in the *Soma*  
sacrifice, and thus they further contend that the clause *Dvayoh Prapaṇanti* in No. 3  
is to be construed as being intended to apply also to the first and the fourth  
quarters of the sacrifice by the *Vaiśvadeva* and the *Śunâśriya*.

In short, what they maintain is that all that No. 2 lays down is that the  
‘ Northern Altar ’ should not be established in the case of the *Vaiśvadeva* and the  
*Śunâśriya* quarters. This does not prohibit the kindling of the fire, which has  
been presented quite generally in No. 3. Thus they say, here there is a virtual  
conflict between the text, and thus there is scope for the rule of option ( *Vikalpa* )  
to prevail, and taking advantage of this, they contend that the northern altar  
should be constructed in the *Vaiśvadeva* and the *Śunâśriya* quarters.

To this the *Râddhântins* or the upholders of the correct opinion, reply that  
this method of argument involves the fault of “variableness in the precept”  
( *Vidhi-Vaiṣhamya* ), and cannot therefore be allowed. For, the opponents once  
construe No. 1 as a “general rule of *Vidhi*,” with No. 2 as an exception. They  
construe it again as a “general rule,” side by side No. 2 which they now construe  
as an absolute rule creating contradiction. They get the fire by the first view and  
altar by the second, which is faulty and cannot therefore be allowed.

As stated at the beginning of this note the reader will find a very lucid  
exposition of this in the short but clear statement in the *Subodhini* pp. 67-69.  
Tr : pp. 168-174.

According to this maxim, it would be wrong to construe a rule in one way  
in one place, and in quite another way in another place.

1. Ch. IX. 185.

2. Of Nārada, Ch. XIII. 26.

the wife takes as much as is adequate for her subsistence, and the rest the brothers take ; but (that) if the estate be barely enough for the support of the widow, or less than that, then to provide (for the case of) a conflict ( which might arise ) viz. whether the wife alone should take or the brothers also, the text<sup>1</sup>: “the wife, the daughters &c.” has been propounded to demonstrate the potentiality of the ( claim of the ) first (claimant). This opinion too the Reverend Teacher<sup>2</sup> does not tolerate. For he interprets the text<sup>3</sup>: “Of him who leaves no male issue the father shall take the inheritance, “or his brothers ” as laying down an option, and not as laying down an order ( of succession ), but only as indicating the right ( of persons ) in the matter of inheritance, and that, that text becomes applicable when the group of heirs such as the wife and the rest fail; and also that the text of Śaṅkha relates to re-united brothers. ( 36 ) Moreover, it does not appear either from this text or from the context, that it is relative to an inconsiderable estate. If ( the concluding portion of the text viz. ) “on failure of the first among these, “the next in order is heir ” be restricted to the case of a small property,<sup>4</sup> by reference to another passage, in two instances ( viz. of ) “the widow and the daughters,” but ( be understood to ) relate to wealth generally in the case of ‘the father and the rest’ the consequent defect of the variableness in the precept referred to above affects this interpretation. So this is<sup>5</sup> a mere trifle. ( 37 ) As for the text of Hārīta: “If a woman, become a widow in her youth, be ill-behaved<sup>6</sup>, maintenance must in that case be given to her for the “support<sup>7</sup> of life,” that too is intended for a denial of the right of a

1. Of Yājñ. II. 135 see p. 1065.

2. i. e. Viśvarūpachārya. ( Subodhini & Bālabhāṭṭi. )

3. Of Manu. Ch. IX. 185.

4. On page 94 l. v for वाक्यान्तरमपेक्षाल्पधनविषयत्वम्...read विषयत्वम्.

5. Viz: “They should provide for their maintenance &c.” Nārada Ch.f XIII. 26 See n. above 236 and p. 21.

6. This यत्किञ्चिदेतत् does not appear in the translation by Mr. Colebrooke.

7. कर्कशा Karkṣā Colebrooke translates “ head-strong ” Mr. Mandlik translates as: “If a woman becoming a widow in her youth, come to be suspected of unchastity &c. ( p. 79 ll. 9-10 )” Bālabhāṭṭa renders it as क्रूरा cruel. The dictionaries translate the word as “ill-conducted, unchaste, unfaithful” when used in

widow suspected of incontinency, to take the whole estate; (moreover) from this very passage<sup>1</sup> it is apparent that a widow, not suspected of mis-conduct has a right to take the whole property. (38) And with this same view, it has been said by Śaṅkha<sup>2</sup> "Or his senior wife."

\* Page 95 Being senior *i. e.* senior or superior in qualities, and unsuspected of incontinency, she takes the whole wealth ; and like a mother, maintains any other ( wife of her husband who is ) ill-conducted. This all is unexceptionable.

(39) Therefore it has been established that a wedded wife takes the whole estate of a man, who, being separated (from his co-heirs) and not subsequently re-united (with them) dies leaving no male issue.

( Contd. from last page )

reference to a woman. This sense is also to be found in the following couplet from the lexicon *Viśva* ( विश्व ) cited in the *Rāmāśrami* on *Amarakoṣa*. ( III.3-217 ).

"कर्कशः पुरुषे कुरे कृपणे निर्दये दृढे । इक्षौ साहसिके कासमर्दकापिह्वरोपि "

It is derived from the two words कर् ( कृञ् हिंसायाम् ) and कश् ( कश् शब्दे ) कश् चासौ कश्च "He who is aggressive as well as harsh." The translation given above would thus be appropriate. *Vijñāneśvara's* explanation of this term is शङ्कितव्यक्तीचारा "Suspected of incontinency" and not "incontinent." The suspicion being caused by her general behaviour and manners.

In *Savitribai vs Luxmibai* 2 Bom. at p. 606 Westropp. C. J. while considering this text, doubted whether this text applied to maintenance. See also *Valu vs Ganga* 7 Bom. at p. 88.

1. आयुषः क्षपणार्थम्—There is a special meaning in the expression क्षपणार्थम्—क्षपण ( *kṣhapana* ) is derived from the word क्षि ( to waste ). Mark the expression which indicates that the allowance is to be given to her not so much for the support of life, with a view to its extension or prolongation, but it is to be given till the life wears away. The meaning is "Let her have a subsistence, till the sinful life wastes away."

प्रतिष्ठिता enriched, अप्रतिष्ठिता unprovided. These expressions must be construed in the sense of 'indigent', as opposed to 'possessed of means' irrespective of the sources of provision or non-provision. See *Manik Kunwar vs Kundan* K. 47 All. 403 following 23 Bom. 229 and the cases in 2 A ll. 561 and 4 All. 243.

2 " *i. e.* from this it is clear that the rule that a chaste wife takes the whole inheritance is also approved of by this writer." *Bālabhaṭṭi* p. 200 l. 21.

See *Vinayakrao vs Luxmibai* 1 Bom. H. C. Rep. ( O. C. J. ) 117 at p. 122.

## [ Colebrooke Sect. II ]

## [ Right of the Daughters and Daughter's Sons. ]

(1) On failure of her, the daughters (inherit). The plural is used in "the daughters" to suggest the equal or unequal participation of daughters alike or dissimilar by class. (2) Thus<sup>1</sup> **Kātyāyana** says: "A wife takes the estate of her husband, *i.e.* such a one as does not lead an incontinent life; and in default of her the daughter, if she be unmarried then." And also **Bṛhaspati**²: "The wife is pronounced (to be) the successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

(3) Here, however, if there be a competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited, *viz* : "In default of her, the daughter (takes) if she be unmarried then." (4) Moreover, if the competition be between an enriched and unprovided daughter, the unprovided inherits; and on failure of such, the enriched one succeeds. For the text of **Gautama**³ *viz*. "A woman's *strīdhana* goes to her daughters, unmarried or unprovided" is equally applicable in the case of the father's estate. (5) Nor, must it be supposed that this relates to the appointed daughter : for, in treating of the male issue,

1. According to the Mitākṣharā, the right of a daughter is based on consanguinity and not religious merit, as is the case under the Dāya-Bhāga, under which no daughter could inherit unless she was capable of bearing male issue, who would then offer funeral oblations to the maternal grandfather; so that widowed daughters having no male issue, or daughters who have an incapacity for bringing any but daughters into the world, are excluded under the Dāya-Bhāga (See Ch. XI. 2.1) *Pramila Devi vs Chandra Sekhar* 43 All. 450 in this respect the Smṛti-Chandrikā in giving the reason of this rule appears to adopt the same line of reasoning (See Ch. XI sect. II. p. 12). But the Madras High Court held this to be a merely moral precept and has followed the Bombay ruling in *Adayappa vs Rudrawa* 4 Bom. 104 at p. 111, in *Simmani Ammal vs Muttammal* 3 Mad. 265 at p. 269. See also *Vedammal vs Vedanayaga* 31 Mad. 100 at p. 108; and also *Vinayakrav vs Luzmibai* 1 Bom. H. C. Rep. (O. C. J.) at p. 125.

Daughter's daughter's son is preferable to the sister's son. *Kalimuthan Pillai vs Ammamuthu* 58 Mad. 238.

2. Ch. XXV. 55-56

3. Ch. XXVIII. 22.



an appointed daughter and her son have been pronounced equal to an *Aurasa* son (by the text<sup>1</sup>): "Equal to him is the *putrikā-sutah*."

(6) By the import of the particle *cha*, "also", on failure of daughters the daughter's son succeeds to the estate. Thus  
The daughter's sons. **Vishṇu**<sup>2</sup> says: "If a man leave neither son, nor  
"son's son, nor issue, the daughter's sons shall  
"take his wealth. For, in regard to the (right to the) performance of  
"obsequies of ancestors, the daughter's sons are considered as son's  
"sons." **Manu**<sup>3</sup> likewise declares, "By that male child<sup>4</sup>, whom a  
"daughter, whether not appointed or appointed, shall produce from

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1. Yājñ. II, 128, see page 1045 l. 9.

2. Referring to this passage, and to *Dāya-Bhāga* Ch. XI sec. II pp. 18-20, the Madras High Court remarks in *Karuppi Nachir vs Sankar Narayana Chetty*, 27 Mad. 300 at p. 311:—

"The difference in his (i. e. daughter's son's) position under the old law "and the present law is that under the former if he is the son of an appointed "daughter (and only one such daughter can be appointed), he becomes by a fiction "of law the son or son's son of the maternal grandfather, and as such, a member of "the grandfather's family, and is not a member of his own father's family" (see note 3 on p. 1046 above). "Under the present law he is a member of his own father's "family, but he is regarded as being also as good as a son's son to his maternal "grandfather"; see also the observations of the Court in *Jamiyatram vs Bai Jamna*, 2 Bom. H. C. R. (A. C. J.) 11, at p. 14 sqq. as to whether a daughter's interest during the lifetime of a widow is a vested one or a merely contingent estate. See also *Vithalrao vs Ramrao* 24 Bom. 317 = 2 Bom. L. R. at p. 18 and *Muttuvaduganatha Tevar vs Periasami*, 16 Mad. II, at p. 16 to 17.

3. Ch. IX. 136.

4. Here the claim of the daughter's son to the estate of the maternal grandfather has been demonstrated. Bālabhāṭṭa argues a claim for the daughter's daughter on the analogy between succession to the *strīdhana* and inheritance of the paternal estate. (See Bālabhāṭṭi p. 207 ll. 16-29 & p. 223 l. 26.)

There is no support in Yājñavalkya-Smṛti for the right of the daughter's daughters as heirs coming immediately after the daughter's sons. Nor is there any direct authority in the Mitākṣharā. But Bālabhāṭṭa refers to the special text of Yājñavalkya (II. 145) on the succession to *Strīdhana* and to the text of Nārada viz: "The daughters 'take the residue of the property of the mother," and maintains that on the same grounds the inclusion of the daughter along with the daughter's son in the particle *cha*, 'and', in the line of succession is proper. "And," adds the author of Bālabhāṭṭi, "this is proper also, as in the case of a "succession to *strīdhana*, the order is, daughter, daughter's son, grandson &c., so

“(a husband of) an equal class, the maternal grand-father becomes  
“the grandsire of a son’s son; he shall offer the funeral cake and  
“take the estate.”

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[ Colebrooke Sect. III ]

[ Right of Parents. ]

(1) On failure of these (heirs) the two parents *i.e.* the mother and the father are successors to the property.

(2) Although<sup>1</sup> the order, in which parents succeed to the estate, do

( Contd. from last page )

“in the case of a succession to the father’s estate, the son, grandson, his son, widow, daughter, daughter’s son, daughter’s daughter &c. would be the order inferable by analogy, having regard to (the doctrine of) propinquity. Viññāneśvara also having referred to the text of Gautama (Ch. XXVIII. s. 22), viz. “a woman’s strīdhana goes to her daughters whether married or unmarried” as being equally applicable in the case of the father’s estate, this right of the daughter’s daughters to succeed is also approved by him. Otherwise, the daughter’s daughters having been referred to first (*i.e.* in the succession to the mother’s property) and there being no reference to them, nor their inclusion here, it “would come to their entire exclusion as heirs at all.” And so Bālabhāṭṭa maintains that the daughter’s daughter is also an heir immediately after the daughter’s son. And this is proper.

West and Buhler in their Hindu Law [ third Edition p. 130 (c.) ] have a note on this subject. It does not refer to this line of reasoning of Bālabhāṭṭa, and is unconvincing as a ground for excluding daughter’s daughter. Further on, at p. 477, a precedent from Thanā has been quoted, in which the answer simply states in general terms that the second cousins and the grand-daughter are not heirs.

The exclusion of this class of heirs *viz.* daughter’s daughter from their proper place in the order of succession would thus appear to be not based on sound reasons. Act II of 1929 has now definitely placed her in the line of heirs.

1. Mark the following passage from the Subodhini which serves as a very good introduction to the passage in the Mitākṣharā: See Subodhini p. 70 ll. 31-33. Indeed, in the absence of the daughter or the daughter’s son, the parent’s right of succession is laid down. However, as the term ‘parents’ *Pitarau* is in the *Ekakṣepha*-uniresidual-compound form *i.e.* retaining the one member of the compound and omitting others, the question would arise whether the parents take conjointly or severally, and again whether the order of succession is optional or regulated and fixed.

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not clearly<sup>1</sup> appear, since a 'conjunctive compound' is declared<sup>2</sup> to present the meaning of its several terms at once, and the *ekakṣha*<sup>3</sup> is regarded as an exception to that, still as the word 'mother' stands first

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To this Vijñāneśvara gives an answer : that of the two parents, mother and father, the mother has preference. His reasons may be summarised thus :—

- (1) In dissolving the compound word *Pitarau* the word *Mâtâ* comes first.
- (2) Even when the *ekakṣha* compound is not used, and the ordinary *Dvandva* is used, as in *Mâtâpitarau*, the word *Mâtâ* comes first.
- (3) The text also gives the same order, whether the express or the implied sense is taken.
- (4) In the case where a man has several wives and several sons by each wife, the propinquity between a particular son and his mother is greater than between him and the father. See Bālabhaṭṭi. Subodhini attempts an explanation on the same lines as adopted by the Mitākṣharâ.

This is not quite clear. Vijñāneśvara says that because the father is a common parent of all, and the mother a particular parent, therefore she has greater propinquity, a reasoning which is not quite convincing. See note further on. *Khodabhai vs Bahdhar*, 6 Bom. 541 at p. 544 ; the rule of propinquity alone having the final determining force the mother has preference. See *Anandī vs Harisaba* 33 Bom. at p. 307. *Lallubhai's case* 2 Bom. at p. 439.

N. B. Mother does not include the step-mother. *Rama Nand vs Surgiani* 16 All. at p. 224.

The propinquity here referred to is different from the 'propinquity elsewhere in the *Mitākṣharâ* : See *Vithalrao vs Ramrao*, 24 Bom. 317.

1. i. e. from the text of Yājñavalkya II. 135-136 above p. 1065.

2. According to the rule of Pāṇini, (II. 2. 29), the *Dvandva* compound is formed, when two or more words occur with the import of the conjunctive "and" च *cha*. But it is not every combination of words joined together by the conjunctive particle *cha*, 'and', that goes to make up the *dvandva* compound. The conjunctive *cha* has the power to indicate four principal meanings; viz. (1) Community of reference (समुच्चय), (2) Collateralness of reference (अन्वय), (3) reciprocation (इतरेतरयोग), and (4) Cumulation (समाहार), and it is only in these last two of its meanings that the particle *cha* helps to make up a *dvandva* compound.

3. एकशेष—the uniresidual is a species of the *dvandva* or conjunctive compound. Literally it means 'the one remainder'. It is a compound in which one member is retained and all the others are omitted, the one member which is retained being expressive of all those that are omitted यः शिष्यते स लुप्यमानार्थमिधायी i. e. in the compound of पितरौ, *pitarau*, which is compounded of two words thus;

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- in the sentence<sup>1</sup> in which the compound is resolvable, and also (since) in the case where the *ekaśeṣha* (compound) is not used, *i. e.* in the regular<sup>2</sup> compound expression (*mātāpitarau*, *i. e.* mother and father), the word mother is stated first, it follows from the order of the
- 5 terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance, and, on failure of her, the father. (3) Besides, the father is a common parent to the other sons also, but the mother is not so; and since her
- 10 propinquity is consequently greatest, it is just that she should take the estate in the first instance, conformably to the text<sup>3</sup> “to him who “is the nearest among the *sapindas*, the inheritance shall belong”. (4) Nor is the claim in virtue of propinquity restricted to *sapindas*<sup>4</sup>

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*Mātā cha pitā cha*, only one word viz: *pitar* is retained and it is expressive of the other which is dropped. श्वशुरौ, भ्रातरः, are other instances. It may be noticed thus, that according to strict grammatical interpretation any plural form is an instance of *ekaśeṣha*, *e. g.* रामः = रामश्च रामश्च &c. This *ekaśeṣha* is optional, and the regular form may be retained *e. g.* instead of *Pitarau* (*ekaśeṣha*), it may be *Mātāpitarau* (dwandwa). See Pāṇini I. 2-70.

1. *Vigraha* is the dissolution of the compound, and a *vigraha-vākya* is the sentence in which the dissolution of the compound is brought out. The compound expressions *pitarau* as well as *Mātā-pitarau* are both resolvable into the component elements in the same way *i. e.* *Mātā cha pitā cha*—“Mother as well as the father.”

2. See. Pāṇini II. 2. 34. This Sūtra states the rule that a word-form which has fewer vowels is placed first in a dwandwa compound and the *Wārtika* on this enumerates several cases in which certain word forms are placed first *e. g.* names of seasons and stars consisting of equal syllables, a word consisting of light vowels, a word expressive of the more honourable of the two (अभ्यर्हित्व) &c., are placed first, and this last class is illustrated in the *Mahābhāṣhya* of Patañjali and in the *Kāśikā Vṛtti* of Wāmana by this very compound word viz: *Mātāpitarau*.

3. Of Manu Ch. IX. 187. See *Babulal vs Nankulal*; 22 Cal. 339 at p. 346. *Chinnasami Pillai vs Kunju Pillai*, 35 Mad. 152 at p. 158, 159.

4. *Sapinda*. See note (1) on p. 1071 (*Supra*). Colebrooke translates “Kinsmen allied by funeral oblations,” and *Samānodaka* as “kindred connected by libations of water.” See *Umaid Bahadur vs Udai Chand* 6 Cal. 119 at p. 125 (*F. B.*) as regards the meaning of the terms *sapinda* see pages 124 to 127 where the Court observes at p. 127: “These considerations leave no room for doubt that the author of the *Mitākṣharā* has used the word *sapinda* here not in the sense of ‘connection by funeral oblations,’ but of connection by particles of one body as defined in the *Āchārakāṇḍa* (Verse 52 &c.)”. See also *Lakshmanammal vs Tiruvengada* 5 Mad. 241 at p. 245.

only but on the contrary, it appears from this very text, that the rule of propinquity alone is effectual, since even in the case of the *samānodakas* and other relations, a claim to inheritance arises without any<sup>1</sup> exception. (5) Therefore, since, of the two parents (the mother and the father), the mother alone is the nearest in propinquity, it is more proper that she should take the estate. But on failure of her, the father is successor to the property<sup>2</sup>.

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[Colebrooke Sect. IV.]

\* PAGE 96.

( Right of the brothers ).

( 1 ) On failure of the father, the brothers<sup>3</sup> shall share the estate. And likewise **Manu**<sup>4</sup> says: "Of him who leaves no male issue, the father shall take the inheritance or the brothers."

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1. अविवेकेण *i. e.* without any differentiation or distinction, quite generally.

2. The following note by Mr. Colebrooke is important: The commentator *Bālabhāṭṭa* is of opinion that the father should inherit first and then the mother, upon the analogy of more distant kindred, where the paternal line has invariably the preference before the Maternal kindred, and upon the authority of several express passages of law. *Nanda Paṇḍita*, author of the commentaries of the *Mitākṣharâ* and on the institutes of Viṣṇu had before maintained the same opinion. But the older commentator of the *Mitākṣharâ* *Viśveśvara-Bhāṭṭa* has in this instance followed the text of his author in his own treatise entitled *Madana-Pārijāta*, and has supported Yājñavalkya's argument both there and in his commentary named *Subodhini*. Much diversity of opinion does indeed prevail on this question. *Srikara* maintains that the father and mother inherit together and the great majority of writers of eminence (such as *Aparārka*, and *Kamalākara* and the authors of the *Smṛti-Chandrikā*, *Madan-Ratna* and *Vyavahāra Mayūkha* &c.) give the father the preference before the mother. *Jimūtavākhaṇa* and *Raghunandana* have adopted this doctrine. But *Vāchaspati-Miśra* on the contrary concurs with the *Mitākṣharâ* in placing the mother before the father, being guided by an erroneous reading of the text of Viṣṇu (Sect. I § 6) as is remarked in the *Vīramitrodaya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction: If the mother be individually more venerable (See Pāṇini II 2. 35 p. 1092 note 2 above), than the father, she inherits; if she be less so, the father takes the inheritance.

3. *Nanda-Paṇḍita* and *Bālabhāṭṭa* interpret the term brother as including sisters also, *Vide Pāṇini* 1. 2. 68. According to them, the brothers succeed first, and in their default, the sisters: see *Bālabhāṭṭi* p. 209. II. 25-27. See *Vinayak* vs *Lakshmibai* 2 Bom. H. C. R. (O. C. J.) 117 at p. 123 where the controversy as to the 'sisters' being included in the term 'brothers' is referred to and discussed. See also. *Kalian Rai* vs *Ram Chandar* 24 All. 128 at p. 130. *Chandika Baksh* vs *Muna Kuar* 24 All. 279. *Kesri* vs *Ganga* 32 All. 541. *Budhasingh* vs *Lattu Sing* 35 All. 663. *Moolji* vs *Cursandass* 24 Bom. 563; and *Bhagwan* vs *Warubai* 32 Bom. 300.

4. Oh. IX. 185.

(2) As to what has been argued by Dhâreśwara<sup>1</sup>, that 'under the following text of Manu:<sup>2</sup> "Of a son dying childless, the mother shall take the estate; and, if the mother also be dead, the father's mother shall

Dhâreśwara's  
argument.

5 "take the heritage", even while the father is living, if the mother be 'dead, the father's mother *i. e.* the paternal grand-mother, shall take 'the succession, and not the father: because wealth taken by the 'father may go even to sons dissimilar in class; but what is inherited 'by the paternal grand-mother, goes<sup>3</sup> to such only as appertain to the  
10 'same tribe: and that therefore the paternal grand-mother takes the estate.' (3) This even the Holy teacher<sup>4</sup> does not assent to; because the

Not approved of  
by Viśvarûpachârya.

heritable right of sons even dissimilar in class has been expressly ordained by a passage above cited:<sup>5</sup> "The sons of a Brâhmaṇa (in the several tribes)

15 "have four shares, or three, or two, or one etc."

(4) As to the text of Manu<sup>6</sup>: "The property of a Brâhmaṇa must "never be taken by the King; this is the settled rule", that intends the sovereign, and not a son<sup>7</sup> (*i. e.* of the late owner by a woman of the Kṣatriya family).

1. Vijñāneśvara here takes notice of an opinion propounded by certain writers which is contrary to what has been stated above, about the succession of parents. Dhareśwara is one of these, and the author refutes this opinion and reverts to the subject by a retrospect analogous to the rule known as "the lion's look." (सिंहजलोकन )

2. Ch. IX. 217.

3. "Because if the wealth be regarded as taken by the grand-mother, it "would become a maternal estate and would go to sons of the same tribe, while a "father's estate would devolve on all the sons." Subodhini & Bâlabhṭṭi. This is a clear index of the meaning and extent of Strīdhana according to Vijñāneśvara. It will be seen, however, that this distinction has no longer any force under the case law, as the grandmother succeeding to a grandson only takes a widow's 'estate', and on her death succession would be by reference to the last male holder. See *Gandhi Maganlal vs Bai Jadab* 2 Bom. L. R. 574 at p. 583 = 24 Bom. 574. *Mari vs Chinnammal* 8 Mad. at p. 119-120.

4. *i. e.* Viśvarûpachârya; see Subodhini and Bâlabhṭṭi.

5. *i. e.* Verse 125 at p. 1033

6. Ch. IX. 189.

7. Here, the author intends to avoid a confusion which might arise on account of the term Kṣatriya indicating generally the ruling class. The author explains that the text intends the prohibition of an escheat to the sovereign, the ruling authority—and does not prohibit a son of a Brâhmaṇa from a Kṣatriyâ wife from taking.

(5) Among brothers also the uterine<sup>1</sup> brothers take the inheritance in the first instance under the text<sup>2</sup>: "To him, who is the nearest *"sapinda*, the inheritance shall belong"; since the non-uterine brothers are remote through the difference of the mothers.

(6) If there be no uterine brothers, those by different<sup>3</sup> mothers inherit the estate.

(7) On failure of brothers also, their sons<sup>4</sup> share the heritage in the order of their respective fathers.

1. Colebrooke translates half-blood and whole-blood for मित्रोद्भूत and सौद्भूत. Colebrooke adds in bracket (or whole); the expression in the Mitākṣharā is *Sodara* i.e. persons (born) of the same uterus, and the question would be of importance in the case of those among whom re-marriage of women is allowed by law. For in such a case, there might exist brothers who are 'uterine,' but not 'of the whole blood.'

2. of Manu Ch. IX. 187.

See *Subramanaya* vs; *Siva Subramanaya* 17 Mad. at p. 325. *Vithalrao* vs *Ramrao* 2 Bom. L. R. 154-157 = 24 Bom. 317 and *Bhagwan* vs *Warubai* 10 Bom. L. R. 389 = 32 Bom. 300 where this passage has been referred to.

3. According to the *Mayūkha*, the brother's son comes in after the brother. He does not agree with the opinion of the Mitākṣharā as here expressed (see Mandlik p. 80 ll. 29-36,); see *Haridas* vs *Ranchchoddas* 5 Bom. L. R. 516. But this rule does not go beyond brother's children. *Chandika Buksh* vs. *Muna Kuar* 24 All. 273 (P. C.) The stricter rule of the Mitākṣharā was applied in *Kesri* vs *Kalka Prasad* 32 All. 541 (F. B.) where an uncle of the half blood was given preference to the son of an uncle of the whole blood.

4. This expression has received considerable judicial notice, especially in Madras and Allahabad, the opinions expressed in the two courts differing from one another.

According to the view expressed in Madras, the expression 'his son' तत्सुत does not include 'grandson'. See *Suraya* vs *Lakshminarasamma* 5 Mad. 291. *Chinnasami Pillai* vs *Kunju Pillai* 35 Mad. 152, and this view seems to be in agreement with *Subodhini* (see p. 74. ll. 23-26; see also Mr. Mandlik's note p. 360). A contrary opinion has been expressed in Allahabad: see *Kalian Rai* vs *Ramchandra* 24 All. 128. *Budha Singh* vs *Laltu Singh* 34. All. 663 at pp. 667 and 675. See also *Kashibai* vs *Moreswar* 35 Bom. 389 = 13 Bom. L. R. 552. In the judgment of this case, the word 'line' has been interpreted to extend to 6 degrees, and reference is made to *Bhyah Ram Singh* vs *Bhyah Ugar Singh* 14. M. I. A. 373 at p. 394 following what is known as the Harrington theory. As to the theory thus propounded by Mr. Harrington, see Mandlik pages 380-383, its practical working out is not free from difficulty, (see West and Buhler's Hindu Law 3rd Edition p. 124 seq.) The remark

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(8) In case of competition between brothers and brothers' sons, the brothers' sons have no title to the succession, for the right of inheritance of brothers' sons is declared to be on failure of brothers.

(9) When<sup>1</sup>, however, a brother has died leaving no male issue, and the estate has devolved on his brothers generally, if any one of (such) brothers die even (yet) before a distribution of their brother's estate takes place, his sons do, in that case acquire a title through their father; and it is fit, therefore, that a share should be allotted to them, in their father's<sup>2</sup> right, at a distribution of property between them and the surviving brothers.

[Colebrooke Sec. V]

[Succession of kindred of the same family name (agnates) termed Gotrajas or Gentiles.]

(1) If there be not even the brothers' sons, the *Gotrajas*<sup>3</sup> take

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in 35 Bom. at p. 392 extending the 'line' to six degrees was not called for by the facts of that case, and it cannot be said that the rule in Bombay has been settled. As an illustration of the consequences of this dictum, see *Khandacharya vs Govindacharya* 13 Bom. L. R. 1005. Also see Telang J. in *Rachava vs Kalingappa* 16 Bom. 716 at p. 719. And this claim is determined by reference to the paternal ancestor, any distinction based on the ground of blood having no place beyond cases expressly specified. See *Vithbrao vs Ramrao* 24 Bom. 367. *Kesri vs Ganga Sahai* 32 All. 541 (F. B.)

As between a nephew and a grand-nephew no right of representation exists, and the former excludes the latter. *Sher Singh vs Basdev Sidgh* 50 All. 904.

1. See *Devi Purshad vs Thokur Dial* 1 All. 105 at p. 112. and *Jasoda Koer vs Sheo Pershad* 17 Cal. 33 at p. 37.

2. See the rule of Yājñavalkya II. 120 (2) on p. 1017. ll. 23-24.

3. *Gotrajas*—this word is made up of the two parts *Gotra*=gens or family, and *Ja*=born. Persons born in or belonging to the family. Colebrooke has translated it as 'gentiles', while in 2 M. I. A. at p. 151, it has been rendered as 'More distant paternal Kinsmen.' It should be remembered that the word has a special technical meaning attached to it, and as is generally the case with such terms, they are better understood in their original form than by any equivalent of it in the same or other language.

The term *Sagotra* may also be remembered along with this term. Generally both signify the same thing, but strictly and literally there would be a slight difference between the two. For, the first means and indicates those who are born in the

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the estate. The *Gotrajas* are the paternal grand-mother, the *Sapindas*<sup>1</sup> and the *Samānodakas*. (2) Among these, the paternal grand-mother takes the estate first. Because, (although) the paternal grand-mother's succession immediately after the mother was seemingly suggested by the text:<sup>2</sup> "And if the mother also be dead, the father's "mother shall take the heritage," no place, however, is found for her in the compact<sup>3</sup> series of heirs from the father and others to the nephew; and the text: "The father's mother shall take the heritage", is intended simply to indicate her (general) competency for in-

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(same) family, while a *sagotra* is one belonging to the same family. And this difference becomes important in the case of the female *Sapindas*, some of whom are of the same family i. e. (*sagotra*), though they may not be born in the same family, e. g. a mother, a wife, a daughter-in-law, while others are *Sapindas* 'born in the family' (*gotraja*) though they may not continue to be of the same family (*sagotra*) e. g. daughter, a sister. See *Lallubhai vs Cassibai* 5 Bom. 110 (p. c.) at pp. 122-125 = 71. A. 212 p. 234-236 where the terms *Sapindas* &c. are retained in their original form. *Gotra* is not exactly on a par with the Roman *Gens* though the general principles underlying the two are the same. In the case of the terms *Sagotra*, and *Gotraja*, their literal meaning and technical significance should be particularly borne in mind. Thus e. g. the father's mother, who has been pointed out by *Vijñāneśvara* as the first in the line of the *Gotrajas*, is a *gotraja* under the technical acceptance of that term i. e. *Sagotra*, but if its literal meaning (*gotra + ja*), one born in the family) be taken, she is not. So *per contra*, a daughter or sister, though by reason of their birth are *gotrajas* (born in the family) under the literal significance of that term, still according to its technical acceptance are not *gotrajas*, because by reason of their marriage they are not *sagotras*—of the same family.

1. *Sapindas* and *Samānodakas*. These two terms have been explained further on in the text of *Mitākṣharā* quoting from *Brhan Manu* (p. 1100 ll. 8-13). The *Sapindas* referred to here are *gotraja* or *sagotra sapindas*, and not any *Sapindas* covered by the definition of that term as given by *Vijñāneśvara*. See note 1 on p. 1071 (*supra*). 2. Of *Manu* Ch. IX. 217 (see p. 1094 ll. 4 & 5. *supra*)

3. "Compact series of heirs," i. e.—The expression in the *Mitākṣharā* is *Baddhakrama* "(Those) whose order (of succession) has been fixed (as in a phalanx)". The meaning is this:—The mother takes as an heir named in the expression '*Pitarau*', parents i. e. mother and father; and so immediately after her comes the father by virtue of the compound expression. Through the breach made by the father, the whole 'serried phalanx' of heirs ending with the '*Tatsuta*' comes in, leaving no room for the grandmother to enter and thus it is, that she necessarily has to wait till a gap is left for her to enter. See *Mohandas vs Krishnabai* 5 Bom. 597 at pp. 602 & 603.

heritance. She takes immediately after his son<sup>1</sup> in the line<sup>2</sup> of succession; and thus there is no contradiction.

1. *Tatsuta*—i. e. the son of the brother. See note 3 on p. 1095.

2. 'The line'—The original word is *santāna*—which literally means something which is going on continuously (*san + tana*). How far this 'line' extends has been the subject of much discussion, and recently, this question has attracted considerable attention in Courts in India, especially in Allahabad and Madras; and in one case the Bombay High Court appears to have expressed a view in line with the Allahabad view, the Court in that case extending the 'line' to seven degrees.

According to the *Subodhini* the 'line' would appear not to extend beyond the 'tatsuta,' the expression used by the *Mitākṣharā*, and Mr. Mandlik in an elaborate note has maintained this view, which would appear to be the proper view. See note above on p. 1095. See also the following cases: *Rahi vs Govind* 1 Bom. 105; *Vithalrao vs Ramrao* 24 Bom. 317 = 2 Bom. L. R. 157. *Budhasingh vs Laltusingh* 34 All. 663 at pp. 667–675. *Chinnasami Pillai vs Kunja Pillai* 35 Mad. 152 at p. 158. *Kasibai vs Moreshwar* 35 Bom. 389 = 13 Bom. L.R. 552. *Lallubhai vs Cassibai* 5 Bom. 121. *Surayya vs Lakshminarasayya* 5 Mad. 295.

*Shidramappa vs Neelawabai*. 57 Bom. 377

In the appellate decision of *Budhasing vs Laltu Singh* 42 I. A. 208 the Privy Council have held that the word *Putra* as used here must be understood in a generic sense, as in the case of the lineal descendants of the deceased, and thus held that the grandson of an uncle had priority over the son of a granduncle. In a later case *Soobramiah vs Nataraja* 53 Mad. 61 the Madras High Court, adopting the ruling in Budhasing's case limited the extension of the line of the *gotrajas* to three degrees only. In the recent case of *Appaji vs Mohanlal* 32 Bom. L. R. 709 (F. B.) the same point came indirectly for a decision, but no direct ruling has been given. The point which still requires a clear decision is upto what degree should the word 'line', *suta*, be taken to extend? see *Lala Harihar Pratap Bakhsh Singh vs Raja Bajrang* 9 Luck. 211.

*Utkarṣhe tatsulānantaram*—in the line of a succession immediately after the *tatsuta*. There are variations in the reading of the passage in the *Mitākṣharā*; these are noticed by Bālabhāṭṭa. (See p. 211 ll. 20–22.)

The compact series of heirs ends with the brother's son and does not include brother's grandson. Therefore a daughter-in-law has preference over the brother's grandson. *Appaji vs Mohanlal* 32 Bom. L. R. 709 (F. B.); 54 Bom. 564.

*Act II of 1929*—According to this Act, the son's daughter, daughter's daughter, sister, and sister's son, are declared as heirs immediately after the father's father and before the father's brother.

The Lucknow High Court in interpreting this Act has held that the *Mitākṣharā* has been superseded by this Act, as regards sisters both where they were regarded as heirs before, as also where they were not so regarded. *Bhagwan Dei vs Radha*. 8 Luck. 646. It has been held that the Act applied to estates of those who died before the Act came into force if the estate vested in a female who was alive when the Act came into force i. e. 21st February 1929, and the question of inheritance by reversion opened after that date; *Shrimati Shakuntala Devi vs Khushalya Devi* 17 Lah. 354–356.

(3) In the absence of the paternal grand-mother, however, the *sapindas* born<sup>1</sup> in the same *gotra* (with the deceased), such as the paternal grand-father and others, inherit the estate; for *sapindas* of a different *gotra* are indicated by the term *Bandhus*. (4) Among these, moreover, on failure of the father's line<sup>2</sup>, the paternal grand-mother, the paternal grand-father, the paternal uncles and their sons, are successively heirs to the estate. 5

1. See note above and *Lallubhai vs Cassibai* 5 Bom. at p. 122-7 I. A. 236. *Saguna vs Sadashiv* 26 Bom. 710 at p. 713. *Umaid Bahadur vs Udichand* 6 Cal. 119 (F. B.) at p. 120. *Kallianrai vs Ramchandrar* 24 All. 128 at p. 131. See observations in 13 M. A. I. A. at p. 378.

2. Colebrooke translates, "In the absence of the paternal grand-mother, the *gotrajas*, 'kinsmen born in the same family with the deceased' and *sapindas* connected by funeral oblations, namely the paternal grand-mother &c.". Bālabhāṭṭa insists that the grand-father takes before the grand-mother. (See p. 211 ll. 23-33). But the Mayūkha does not support him here as in the case of the parents. Bālabhāṭṭa's reasoning, however, is not convincing.

"The commentator takes occasion to censure an interpretation which corresponds with that of the *Mitākṣharā* as delivered in the following section (S. 6. § 1); and according to which the cognate kindred of the man; himself, of his father and of his mother are the sons of his father's sister and so forth: because it would follow, that the father's sister's son, and the rest would inherit, although the man's own sister and sister's sons were living. Bālabhāṭṭa, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons: which is indeed Nanda-Paṇḍita's own doctrine.

"He adds, 'after the heirs above mentioned, the *sākulya* or distant kinsman is entitled to the succession: meaning 'a relation in the fifth or other remote degree.'

"This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitākṣharā*. On the other hand, the author of the *Vīramitrodaya* has exactly followed the *Mitākṣharā*; and so has *Kamalākara*; and it is also confirmed by *Mādhavāchārya*, in the *Vyavahāra-Mādhava*, as well as by the *Smṛti-chandrikā*.

"But the author of the *Vyavahāra-Mayūkha* contends for a different series of heirs after the brother's son: '1st, the paternal grand-mother; 2nd, the sister; 3rd, the paternal grand-father and the brother of the half blood, as equally near of kin; 4th, the paternal great-grand-father, the paternal uncle, and the son of a brother of the half blood, sharing together as in the same degree of affinity.' He

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(5) On failure of the paternal grand-father's line, the paternal great-grand-mother, the paternal great-grandfather, his sons and their sons (inherit). In this manner must he understood the succession of *sapindas*<sup>1</sup> of the same *gotra*, as far as the seventh (ascendant).

- 5 (6) If there be none such, the succession devolves upon the *samânodakas*, and these must be understood to be seven (in degrees) beyond the *sapindas*: or else, as far as the limits of knowledge as to birth and name extend. As says **Bṛhan-Manu**<sup>2</sup>: "The relation of the  
10 "*sapindas* ceases with the seventh person; and that of the *samânodakas* "ceases (after extending) as far as the fourteenth (degree), or as "some affirm, (it reaches) as far as the memory of birth and name "(extends); after that is indicated by (the term) *gotra*".

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has not pursued the enumeration further; and the principle stated by him—viz. nearness of kin—does not clearly indicate the rule of continuation of this series—" Colebrooke.

Having regard to the importance of the point involved and having regard to the divergence of views expressed in India in quite recent time, the necessity of a definite decision on this point will soon arise, when the authorities referred to above will be of use.

1. *Samânagotra-sapindas*—are those *sapindas* who belong to the same *gotra* as that of the deceased.

2. To the same effect is **Manu Ch. V. 60**. It runs thus:

सपिण्डता तु पुरुषे सप्तमे विनिवर्तते । समानोदकभावस्तु जन्मनाम्नोत्पेदे ॥

The *Vyavahâra-Mayûkha* refers to this passage; : Tr. "The *Sapinda* relationship ceases with the seventh person [in the line], and that of *Samânodakas* (i.e. those connected by an oblation of water) ends when births and names are no longer known." **Mandlik p. 82 ll. 10-13.**

Relying on this and other texts it has been held in *Bai Deokore vs Amritram Jamiatram* 10 Bom. 372 at p. 379-380—that the word *Samânodaka* includes descendants from a common ancestor more remotely related than the thirteenth degree from the propositus.

See also *Umaid Bahadur vs Udai Chand* 6 Cal. 119 (F. B.). *Mari vs Chinnamal* 8 Mad. at p. 128. *Ram Barun Lal vs Kamla Prasad* 32 All. 594 at pp. 597-598. where it was held that a *Samânodaka* is a nearer heir than a *bandhu*; and *Bhyah Ram Singh vs Bhagat Ugar Singh* 13 M. I. A. at p. 380. *Kalgauda vs Somappa* 33 Bom. 669 at p. 683. See also *Jadunath Kuar vs Bisheshar* 59 I.A. 173 at pp. 189-190.

[ Colebrooke, Sect. VI. ]

\*PAGE 97.

[ Of the succession of cognate kindred or Bandhus. ]

(1) On failure of the *Gotrajas*,<sup>1</sup> the *Bandhus* succeed to the estate. Bandhus moreover, are of three kinds, the *Ātma-bandhus* (or his own bandhus), the *Pitr-bandhus* (or his father's bandhus), and the *Mâtr-bandhus* (or his mother's bandhus); as has been declared<sup>2</sup> (by the following text): "The sons of his own father's sister, the sons of

1. *Gotrajas* and *Bandhus*—See note above. Both are *Sapiṇḍas*, but the former are *Sapiṇḍas* of the same *gotra* or *Sagotra-Sapiṇḍas*, while the latter are *sapiṇḍas* of a different *gotra* or *bhinnagotra sapiṇḍas*. Mr. Colebrooke translates these terms as; "gentiles and cognates." See *Muthusami vs Sunambadu Muthukumaraswami* 23 I. A. 83-89 = 19 Mad. 405.

N. B. In Bombay *Widows* of *gotraja sapiṇḍas* succeed after the males in each line. These take *her capita* and not *her stirpes*. *Kallava vs Vithabai* 32 Bom. L. R. 995.

2. Bâlambhaṭṭa assigns this text to *Vṛddha-Śâtâtapa* (see p. 214 l. 28), but it is ascribed to *Baudhâya* in *Vyavahâra-Mâdhava* (see p. 354. Bibliotheca India Series.)

*Bandhus*—The enumeration of *bandhus* given here is not exhaustive but only illustrative. *Girdharee Lal vs The Bengal Government* 12 M. I. A. 448; *Mohandas vs Krishnabai* 5 Bom. 597 at p. 601. *Laksmanamal vs Tirunengoda* 5 Mad. 241 at p. 245. A contrary view was expressed in *Narasimma vs Mangalam* 13 Mad. 10 at p. 13, but having regard to the decision of the Privy Council in 23 All. 83 and 19 Mad. 405 cited above, the reasoning of the decision in 13 Mad. 10 would seem not to apply now, even to Madras, nor does it "determine the order of succession as between several lines within each of the series of *bandhus*" per Jenkins O. J. in *Saguna vs Sadashiva* 4 Bom. L. R. 527 at p. 530 = 26 Bom. 710.

In *Gajadhar vs Gauri Shankar* 54 All. 698 (F. B.), however, the Allahabad High Court has held otherwise. According to it the classes cannot be added to (p. 704). In order to succeed as a Bandhu it must be proved that a mutuality of relationship as Bandhus was established (705). Therefore a father's sister's son's daughter's son was held not to be a heritable Bandhu. (Ibid.) See also pages 701-718 and 719-735.

The *sapiṇḍa* relationship of a *bandhu* ceases after five degrees from the common ancestor. *Ramchandra Martand Vaikar vs Vinayak* 42 Cal. 384

The son of a half-sister of the father has preference over the son of a sister of the mother, because the former confers greater spiritual benefit than the latter, *Jotindra Nath Roy vs Nagendra* 33 Bom. L. R. 1411 (P. C.).

The step-son of the step-sister of a male is not an heir. *Saminatha vs Angammal* 45 Mad. 257.

Father's brother's grandson succeeds before the brother's great-grandson. *Venkateswara Rao vs Adinarayana* 58 Mad. 323.

- “his own mother’s sister, and the sons of his own maternal uncle,  
 “should be considered as the *Ātma-bandhus* (or his own bandhus).  
 “The sons of his father’s paternal aunt, the sons of his father’s  
 “mother’s sister, and the sons of his father’s maternal uncle, should  
 5 “be known as his *Pitr-bandhus* (or his father’s bandhus). The sons  
 “of his mother’s father’s sister, the sons of his mother’s mother’s sister,  
 “and the sons of his mother’s maternal uncle should be known as his  
 “*Mâtr-bandhus* (or his mother’s bandhus<sup>1</sup>).”

- (2) Here also, by reason of near affinity, first the *Ātma-bandhus*  
 10 succeed to the estate; on failure of them, the *Pitr-bandhus*, and on  
 their failure the *Mâtr-bandhus* (succeed). This must be understood  
 to be the order (of succession here intended).

[Colebrooke Sect. VII.]

[<sup>2</sup>Of the succession of strangers upon failure of the kindred.]

- 15 (1) On failure of the *bandhus*, the preceptor<sup>3</sup>, and on failure of  
 him, the pupil (succeeds) according to the text of *Āpastamba* :<sup>4</sup> “On  
 “failure of the sons, the nearest *sapinda* (inherits); on failure of  
 “them, the preceptor; on failure of the preceptor, the pupil (shall  
 “take the wealth)” (2) If there be no pupil, the fellow-student is

1. The three kinds of *bandhus* mentioned here are not mentioned in *Aparârka*  
 (see p. 745 *Ānandâśrama* No. 45); see however *Mayâkha* (Mandlik, Sk. p. 55.  
 Eng. Tr. p. 82: 1. 28 &c).

2 *N. B.* Now follow the principles of succession of strangers. It may be  
 noted that this line cannot be resorted to unless and until all the sagotra and other  
 relations are exhausted. See *Lakṣmanammal vs Tirunengada* 5 Mad. 241 at p.  
 245. See also *Umed Bahadur vs Udai Chand* 6 Cal. 119. 16 Bom.

3. *Āchârya* is the word in the text for the English word preceptor. There  
 are other terms indicative of the same, such as *Guru*, *Upâdhyâya*, *Ritwik* &c., but  
 there are minute distinctions in their import. See *Yājñavalkya* I. 34, 35. Tr.  
 pp. 126, 127. *Manu* Ch. II. 140-145, where all these terms are explained and the  
 importance of each is indicated. See also *Amarakośa* II-7-(6-7).

4. *Dharmasûtras*, II-6-14-(2-3).



the successor. He, who received his investiture, lessons<sup>1</sup> (in the scriptures) with their meaning, and thus acquired knowledge proceeding therefrom from the same preceptor, is a fellow-student.

(3) If there be no fellow-student, some learned<sup>2</sup> and venerable priest should take the property of a *Brâhmana*, according to the text of **Gautama**<sup>3</sup> : “*S’rotriyas* or venerable priests, should share the wealth of a *Brâhmana* who leaves no male issue.” (4) For want of such a successor, any *Brâhmana* (may be the heir); As says **Manu**<sup>4</sup> : “But on failure of all (the heirs), *Brâhmanas* (shall) share the estate; such (*Brâhmanas*) as are versed in the three Vedas, (and are) pure and self-controlled; thus the law is not violated.” 5 10

(5) Never shall a king take the wealth of a *Brâhmana*, vide the text of **Manu**<sup>5</sup> : “The property of a *Brâhmana* shall never be taken by a king; this is settled law.” It has also been said by **Nârada** : “If for the wealth of a *Brâhmana*, on his demise, there be no heir, it must be given to a *Brâhmana*; (acting) otherwise<sup>6</sup>, the king becomes tainted with sin.” 15

(6) The wealth of a *Kṣatriya* and others, (however), in the absence of heirs down to the fellow-student, the king may take, and not a *Brâhmana*. As says **Manu**<sup>7</sup> : “But, (the property) of other classes, on failure of all (heirs), the king may take.” 20

1. The expression in the text is *Adhyayana*—study. The study of the Vedas is the most important part of a Man’s education, and an *Adhyayana* necessarily includes their study. In fact *adhyayana* means *per excellence* the study of the Vedas.

2. *S’rotriya*—a learned *Brâhmana* and not a mere *Brâhmana*. Note the following

जन्मना ब्राह्मणो ज्ञेयः संस्कारैर्द्विज उच्यते । विद्याभ्यासी भवेद्विप्रः श्रोत्रियस्त्रिभिरेव हि ॥

The derivation of the word is explained by reference to two rules of Grammar by Pāṇini 5-2-84 and 4-2-59, the result of which is that the term is applicable to such a *Brâhmana* as has mastered the whole *Vedic* lore.

3. Ch. XXVIII. 39.

4. Ch. IX. 188.

5. Ch. IX. 189.

6. Otherwise—i. e. if he takes it himself (see *Bâlabhattachi* p. 216 l. 7.)

7. Ch. IX. 189.

## Vīramitrodaya

Now, in the absence of the twelve sorts of sons, the Author discusses those who would take the property

## Yājñavalkya, Verses 135-136

- 5 *Aputrasya*, 'Of one without issue,' *i.e.* without any of the twelve sorts of sons, and without a grandson or a great-grandson, *swaryātasya*, 'one departed for heaven' *i.e.* who has died, of the wife and those others stated, in the absence of the one prior 'each one next in order' *uttarottarah*, becomes *dhanabhāk*, 'entitled to the property'. Thus this  
10 *vidhi*, 'rule', regarding the succession to the property of one dying without issue is equal 'in all classes', *sarva-varṇeṣhu*.

- There, first the wife is entitled to the property; such a one, however, is to be understood to be one who has been consecrated by the sacrament of marriage, vide the rule<sup>1</sup>: "the substitute ॠ replaces the  
15 "final ॠ of ॠति before the feminine affix ॠ when the word so formed "indicates 'a wife who takes a part in the sacrifices of her husband'." Here *Kātyāyana* states a special rule: "A wife takes the property of her "husband, who is not unfaithful: failing her, however, the daughter, "if she be unmarried then". If the wife, however, be unfaithful,  
20 *Nārada*<sup>2</sup> states a rule: "In the absence of the son, however, the daughter, "as she has been declared to be equal to a son."<sup>3</sup> "When the wife "does not exist, the unmarried daughter of the same class as that of the "father, succeed to the property", vide the aforestated text of *Kātyāyana*.

- Some say that this has a reference to the appointed daughter.  
25 That is not proper; since even when the wife is living she is entitled to the property; since under the text of *Vasiṣṭha*<sup>4</sup> *viz*: "The third is the "putrikā herself"; has been regarded as a son. Also this text of *Brhaspati*<sup>5</sup>: "From his several limbs is produced, like the son, the "daughter of a man; when she herself is living how can any other take  
30 "the property? (56). Equal in caste (to her father) and married to a man "of the same caste as her own, virtuous and devoted to service, whether "she be appointed or not appointed as a son, she has been considered "as entitled to take her father's property" (57). Here, moreover, the marriedness is qualitative of the appointed only, and not also of the not  
35 appointed even, vide the text of *Kātyāyana*, so hold the *Southerners*. As a matter of fact, however, the meaning of the word daughter here *viz*. 'not impotent, not appointed, mentally regarded as a daughter' is without including her among the sons in an equivocal manner.

1. Of Grammar, IV. I. 33.

2. Ch. XIII. 50.

3. Dr. Jolly reads तुल्यसंतानकारणात्.

4. Ch. XVII. 15.

5. Ch. XXV. 56, 57.

From the original text, "women are not entitled to an inheritance "as they are without vigour", and by the contraction and limitation of the text of *Manu*<sup>2</sup>: "Of a sonless man the father shall take the property, "or the brothers even", this way would be in pursuance of the usage of the Maithilas.

*Pitarau*, 'the parents', i.e. the mother and the father. These by reason of the two texts, viz. "Weak" etc. and also by reason of the order in the text of *Kātyāyana*, viz. "Of him (dying) without issue, the wife of a good "family, or the daughters also; in their absence, the father, the mother "and also the sons, have been declared (to be heirs)", although, (the property goes) to the father, and in his absence the mother takes the wealth, it is clear that this is so under the text of *Viṣṇu*<sup>3</sup> viz: "Of a "sonless man, the property goes to the wife, failing her to the daughter, "in her absence to the father, and in his absence to the mother."

Thus therefore the statement of *Mitākṣharâ*<sup>4</sup>: "That because in the "solution clause of the compound the word mother happens to be placed "first, and also because as compared with the father she does not happen "to be the parent of a child born of another mother and thus having a "common propinquity" is doubtful.<sup>5</sup>

Failing the mother, the uterine brothers, in their absence the brother's son, and in his absence the *gotraja sapindas*, *sakulyas*, and the rest according to the nearness of their relationship. In the absence of these the *Bandhus* technically described as: "The sons of one's "father's sister, the sons of one's mother's sister, and the sons of one's "maternal uncle are to be known as 'one's own *Bandhu*'s, *Âtmabandhus*." Failing these *Śiṣhyah* 'the pupil'; in his absence the *Sabrahmachâri*, 'co-student', i. e. one who received his initiation and the study of the *vedas* from the same preceptor.

Here, by the use of the word *cha*, 'also', is included the right of a step-brother in the absence of the uterine brother; by the use of the word *tathâ*, 'similarly', in the absence of the *Âtmabandhus*, those of the *Pitrbandhus*, and in their absence, of the *Mâtrbandhus* as technically defined, and in their absence also that of the Preceptor's right to succeed. By reason of the nearness of relationship also under the text of *Âpastamba*<sup>6</sup>: "In the absence of the preceptor, the resident "student" is the statement in short. *Nârada*<sup>7</sup>: "Even on failure of all the "heirs, the *Brâhmanas* shall share the estate; such as are versed in the "three Vedas, (and are) pure and self-controlled; thus the law is not "violated. The property of a *Brâhmana* shall never be taken by a King; "this is the settled law; but of other classes, on failure of all, the King "may take" (135-136).

1. Tait. S. VI. 5. 8.

2. Ch. IX. 185.

3. Ch. XVII. 4-8.

4. See p. 1092, l. 7 above.

5. Text p. 95 l. 18

6. Dh.: S. II. 6. 143

7. See *Manu* Ch. IX. 188, 189.

## S'ūlapāṇi

Now the Author mentions the distribution of the property of one without a son

## Yājñavalkya, Verses 135-136

- 5 *Aputraya*, 'Of one without an issue,' dying, among 'the wife' and the rest, in the absence of the one preceding, the one succeeding, becomes (the heir). So *Viṣṇu*<sup>1</sup>: "The wealth of one without a male issue goes to his wife, in her absence to the daughter, in her absence to the mother, in her absence to the father, in his absence  
10 "to the brother" and so on. This moreover is applicable to those who are equal. So *Bṛhaspati*<sup>2</sup>: "Although the *Sakulyas*, the father, the mother, and the uterine brothers exist, of one who has died without issue, the wife is entitled to take the estate." This right of the wife even when the brothers exist, has reference, however, to the wife endowed with eminent good qualities. And the quality consists in the (performance of the) *śrāddha*, maintaining (unsullied) the bed and such other vows. So (says) *Vṛddha Manu*: "The widow of a childless man, keeping  
15 "unsullied her husband's bed, and persevering in religious observances, shall herself present his funeral oblation and obtain the entirety of his estate." In this manner also "Of one who has died without issue, the property goes to the brothers, in their absence the parents shall take; or the senior wife," this text of *Paithīnasi*, has reference to a wife who is devoid of qualities and who is guilty of adultery. The text of *Śaṅkha*<sup>3</sup> viz.: "They should make provision for the maintenance of his wives till  
20 "his death, provided they preserve unsullied the bed of their lord. They may, however, cut off in the case of those who behave otherwise," should also be taken as applicable (in this manner also) to this subject.

- "In the absence of the sons, however, the daughter as she is equally regarded as in the line the son, as well as the daughter, both are effective  
30 "in perpetuating the lineage," this text of *Nārada*<sup>4</sup> has a reference to the *Putrikāputra*. So *Bṛhaspati*<sup>5</sup>: "Equal in caste (to her father) and married to an equal, virtuous and submissive. Whether (she was) appointed or not appointed as a son, the daughter shall take the father's property."

1. Ch. XVII. 4-8. *Viṣṇuśeṣvara* cites this as the text of *Bṛhadviṣṇu* see p.1067, ll. 8-11 (above). 2. Ch. XXV. 48.

3. In the *Mitākṣharā* this text has been cited as of *Nārada* see above p. 1068, ll. 9-15 and *Nārada* XIII. 26.

4. See *Nārada* XIII. V. 50 where the reading is दुव्यसंतानकारणात्. It should be noted, however, that this text occurs in the *Smṛti* of *Nārada* in the chapter in which in an earlier stage (Verse 2) the order of heirs given is, sons, mother, daughters, in their absence, their sons. *Śūlapāṇi* takes it as having a reference to the *Putrikāputra*.

5. Ch. XXV. 57.

The meaning is, whether she was intended to be made an appointed daughter or not.

"The parents, and brothers likewise"—(in this) the right of the parents when the brothers exist, is in regard to the property acquired by the father, grandfather &c. For what was acquired without detriment to such ancestral estate, even when the parents exist, such property belongs to the brothers. As says Devala: "Thereafter, the property of a sonless man, the uterine brothers shall divide; or even the daughters equal (in caste); or if he be living, the father also." Among these *i. e.* the wife and the rest, in the absence of the one prior to the one next in order. Gone to heaven *viz.* dead. (135-136).

[Colebrooke Sect. VIII]

[On<sup>1</sup> succession to the Property of a Hermit or an ascetic]

(1) It has been declared that sons and grandsons<sup>2</sup> also take the *dāya*, and that on failure of them, the widow and others (succeed).

1. This is an exceptional rule stated specially to be applicable in the case of hermits &c., see *Gajraj Puri vs Achaibar Puri* 16 All. at p. 195. Mayne on Hindu Law § 506. West and Buhler's Hindu Law p. 532. In *The Collector of Dacca vs Jagat Chander Goswami* 28 Cal. 608, an application was made for letters of administration to the estate of a deceased disciple. It was opposed by the Collector of Dacca on behalf of Government. But the report does not give the grounds of the opposition, nor does it give any details. The High Court (Maclean C. J. and Banerjee J.) confirmed the order granting the 'Letters' as prayed for. On this passage Mr. J. C. Ghose observes at p. 788 (2nd Ed.) "With all respect to the learned judges, it should be observed, that according to Hindu Law, the ordinary case of succession should apply to that strange individual the married ascetic. Indeed, according to ancient law, ascetics who have resumed worldly ways, are slaves of the King and their property in strictness belongs to him." (citing *Nārada*.) The report does not give good ground for these observations, nor, it is submitted, are the observations justifiable on the general customary law prevailing among the hermit sects such as the bairagis, gosavis &c. See also *Chhajugir vs Divan* 29 All. 109 at p. 162.

2. Mr. Colebrooke adds after grandsons in bracket, ("or great-grandsons") relying upon Bālabhāṭṭa, who suggests the inclusion of great-grandsons on the strength of the conjunction *Cha*, 'also'. Upon this translation it has been observed at p. 378 of 13 M. I. A. *Bhayah Ram Singh vs Bhayat Ugar Singh*: "This incorporation of the words 'or great-grandsons' in the text of the Mitākṣharâ, shows that the translator (whose authority is of the highest order) considered that the inclusion of the great-grandson, among immediate heirs, was the approved doctrine of the later class of the expositors of the law of Benares."

The Author now propounds an exception to both these :

### Yājñavalkya, Verse 137

Of a hermit, of an ascetic, and of a life-long celibatist, the heirs to the property are, in their order, the preceptor, the virtuous<sup>1</sup> pupil, the spiritual brother and associate in holiness.

(2) Mitākṣharâ :—Wānaprasthasya, of a hermit, yateḥ, of an ascetic,<sup>2</sup> and brahmachârinascha, and of a life-long celibatist, krameṇa, in their order, i.e. in the inverse<sup>3</sup> order, âchâryaḥ<sup>4</sup>, the preceptor, sachchhishyaḥ, a virtuous pupil, dharmabhârâtraikatîrthî cha, and a spiritual brother and associate in holiness also, are successors rikthasya, to the property, i.e. of the wealth.

(3) The Life-long celibatist must be a professed<sup>5</sup> or perpetual one; of a temporary student, however, the mother and the other heirs alone take. And the preceptor is declared to be the heir to a professed student as an exception.<sup>6</sup> (4) A virtuous pupil, however, takes the property of a yati or ascetic. Sachchhishyaḥ, a virtuous pupil,

1. The condition of being virtuous is a general requisite for a pupil. The preceptor and the spiritual brother become successors only if they are virtuous, and so the qualifying clause has been placed in the middle (see Subodhini p. 74.) and so Vijñāneśvara observes further on that even a preceptor, if ill-conducted does not become entitled to a share.

2. The terms 'hermit' and 'ascetic' are severally used for the two words 'Vānaprastha' and 'Sannyâsi' which indicate two distinct orders.

3. See Bālabhāṭṭi p. 244.

4. For the full significance of this term आचार्य and its distinction from the other terms of similar import see Yājñ. I. 34 and 35. and Manu Ch. II. 140-145 (see note 3 on p. 1102 above).

5. i. e. Naishṭhika as distinguished from the Upakurvāna.

It is derived as : निष्ठा मरणं तत्पर्यन्तं ब्रह्मचर्येण निष्ठति. ( निष्ठा-टक् ).

A perpetual religious student who continues with his spiritual preceptor even after the prescribed period, and vows life-long abstinence and charity. See Yājñavalkya I. 49. pp. 140-141 above in Part I.

An Upakurvāna—is only a temporary student. He is in a state of pupilage for a limited time, wishing to pass on into the state of a householder (grhastha).

6. i. e. to the claim of inheritance of the mother and other heirs (see Subodhini p. 74. l. 32. Bālabhāṭṭi. p. 244 l. 24.).

again, is one who is assiduous in receiving<sup>1</sup> lessons in theology<sup>2</sup>, in retaining the same, and in practising its ordinances. For, a person whose conduct is bad is unworthy of the inheritance, were he even the preceptor or any like other. (5) A spiritual brother and associate in holiness takes the property of a *vânaprastha*, *hermit*. *Dharmabhrâtâ*, a spiritual brother, is one who is engaged<sup>3</sup> as a brotherly companion. *Ekatîrthî*, an associate in holiness, is one appertaining to the same hermitage. One who is 'a spiritual brother' and also 'appertains to the same hermitage' is "a spiritual brother and associate in holiness."

(6) In<sup>4</sup> the absence of these *viz.*, the preceptor and the rest, an associate in holiness alone takes even though sons and other (natural) heirs exist.

(7) Indeed by the text of *Vasiṣṭha*<sup>5</sup> *viz.* : " But those who have entered into another order receive no share," there is not even the right of inheritance of those who have entered into another order; how can there be a partition of their property? Nor has a professed<sup>6</sup> student a right to his own acquired wealth : for the acceptance of donations and other means of acquisition are forbidden to him. And since *Gautama*<sup>7</sup> ordains that " A mendicant shall have no hoard," there is no possibility of the self-acquired wealth in the case of a mendicant also.

1. Mr. Colebrooke translates " who is assiduous in the study of theology &c." The original specifies three distinct stages of the 'study' *viz.* of (*Sravaṇa*) listening to the lectures or receiving the lessons, (2) *dhāraṇâ*—retaining them, and (3) *Tadarthānusṛtḥāna*—practising its ordinances intelligently.

2. The original is अद्यत्म *Adhyâtma* i. e. that which addresses itself to the soul i. e. Philosophy. That portion of religious study which refers to the study of Philosophy.

3. i. e. who has taken a vow or undertaking; and who has been accepted as a brother (see Subodhini p. 75 l. 6. Bâlabhaṭṭi p. 245. l. 2.)

4. To the enquiry as to who should be the heir to the property of a *Brahmachâri*, *Yatî* and *Vânaprastha* in the absence of the heirs named above, the Author has mentioned the *Ekatîrthî* " an associate in holiness." (See Subodhini p. 95 l. 7.)

5. Ch. XVII. 52.

6. नैष्ठिक i. e. he cannot claim anything as his self-acquisition. The expression in the *Mitākṣharâ* (p. 97. l. 29) is स्वार्जितधनसंबन्धः *Swârjita-dhanasambandhaḥ*.

7. Ch. III. 11.



(8) The answer is: As for the *Vānaprastha*, a hermit may have

The Answer.

property, under the text<sup>1</sup>: "He (a hermit *i. e.*,

"*Vānaprastha*) may make a hoard of property suffi-

"cient for a day, a month, six months. or a year, and in the month of

5 "Āśvin he should abandon what has been collected," he certainly may

\*PAGE 98.

have property. The *yati* or, 'ascetic', too, under

the text:<sup>2</sup> "Or he should wear clothes to cover his

"privy parts; and he may also take the requisites for his austerities,<sup>3</sup>

"as also sandals", may possess clothes, books and other requisites.

10 The professed student also can have clothes and other property for

his bodily sustenance. (9) And it was therefore proper to explain the

distribution of such (property).

#### Vīramitrodaya

After mentioning the successors to the property of a householder,

15 the Author mentions those of hermit etc.

#### Yājñavalkya, Verse 137

Under the text<sup>1</sup> "one should amass wealth, and the wealth thus

"amassed, one should give over in the month of Āśvin", the property

which a *vānaprastha*, 'hermit', possesses, and under the text<sup>2</sup> "one may

20 "take the requisites for the *yoga* practises, as also sandals", the property

of a *yati*, 'an ascetic', and the property of a *Brahmachāri*, 'a celibate

student', such as clothes and such other things for covering (the body),

the sharers of that are respectively the *āchārya*, 'preceptor', and the rest

*i. e.* in the absence of the prior, the next one etc. in order.

25 *Āchārya*, 'the preceptor'; *sachchīṣhyah*, 'a virtuous pupil', *i. e.* a

pupil capable of listening attentively and assimilating the knowledge

of the soul; *ekatīrthi*, 'a co-student', one who has received his learning

from the same preceptor, and the same also a brother in religious

practises, as the preceptor who is equal to a father, was the same

30 (for both) (137).

1. Of Yājñavalkya Prāyaścittādhyāya 47. (p. 196 ll. 15-16). also Manu Ch. VI, 15.

2. of a Smṛti—author not known.

3. *Yogasambhārabhedāh*—the different articles required for practising *Yoga* *i. e.* the works treating of the same. (See Subodhini p. 75. 1. G. Bālamhṭṭi p. 245 l. 15)

Śūlapāṇi

Yājñavalkya, Verse 137

*Dharmabhrātā*, 'a spiritual brother,' as also *ekatīrthī*, 'an associate in holiness,' — thus it is a *karmadhāraya* compound. *Ekatīrthī*, an associate in holiness 'i. e. one who has a common preceptor. The rest is clear (137).

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[ Colebrooke Sec. IX ]

[ On the union of kinsmen after partition ]

(1) The Author next<sup>1</sup> propounds an exception to the rule that "the wife and certain other heirs succeed to the estate of one who departs for heaven leaving no male issue"

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Yājñavalkya, Verse 138 ( 1st, 3rd and 4th quarters )

A re-united, however, shall keep the share of his re-united<sup>2</sup> ( *parcener* ) who is deceased; or shall deliver it to one born.

(2) *Mitākṣharā*:—Effects which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is a *samsr̥ṣṭī*, a re-united *parcener*. (3) Re-union,<sup>3</sup> moreover, cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle; as *Bṛhaspati*<sup>4</sup> declares: "He who being once separated, dwells again through affection with his father brother, or paternal uncle, is termed re-united." (4) *Tasya Sāmsr̥ṣṭīṇaḥ*, of such a re-united *parcener*, the share or allotment must be given by

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1. Next i. e. after laying down the special rule of succession in the case of hermits &c. the Author propounds another rule which is also of a special nature and is thus an exception to the general course of succession given in Yājñavalkya II. 135 and 136 ( p. 1065. )

2. The construction here is terse and also involved. The first and the second quarters make in themselves independent clauses. But these again are severally connected with the two verbs *dadyāt* and *apaharet* in the third quarter, which again are alternatively connected with the two qualifying expressions *jātasya* and *mṛtasya*.

The translation given here is as adopted by Colebrooke: The *Mitākṣharā* takes the first quarter by itself, and the 2nd, 3rd and 4th quarters together separately. So that, as put by Viṣṇāśvara, the translation would read thus :

( Verse 138, 1st quarter ) " Of a re-united, however, the re-united."

( 2nd, 3rd and 4th quarters )—" Of a uterine brother, however, a uterine shall deliver as well as keep the share ( to ) one who is born, or ( of ) one who is deceased."

3. Re-union—Must be proved as a fact. Therefore according to the *Mitākṣharā* parties to re-union must be those who were parties to their full partition and also that only father, brother and uncle could re-unite. *Ram Narain Chaudhury vs Pankuer* 37 Bom. L.R. 144 (P.C.) = 14 Patna 268. *Basanta Kumara vs Jogendra Nath* 33 Cal. 371.

4. Ch. XXV. 72 ( Secred Books. of the East, Vol. XXXIII. p. 381 )

the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. On failure of male issue, the re-united parcener<sup>1</sup> alone shall take the inheritance, and not the widow or any other heir.

- 5 (5) The Author states an exception to the rule that "a re-united member shall keep the share of his re-united parcener"

**Yājñavalkya, Verse 138 (2nd quarter)**

**But an uterine<sup>2</sup> brother of his uterine brother.**

- 10 (6) Mitākṣharā:—The expressions "of a re-united, a re-united" are to be (taken as) understood here. Hence, the allotment of an uterine re-united brother who is deceased, shall be delivered by the surviving uterine re-united brother to a son born<sup>3</sup> of the re-united. On failure of him, he shall retain it. This is the construction as before. Thus, if there be uterine and non-uterine brothers together, the uterine re-
- 15 united brother alone will take the estate of a uterine re-united parcener, and not the non-uterine one, even though re-united. This, thus, is an exception to what has been said before.

**S'ūlapāṇi**

**Yājñavalkya, Verse 138**

- 20 The re-united has been described by Br̥haspati<sup>4</sup>: "He who being (once) separated dwells again through affection, with his father or brother "or paternal uncle, such a one is termed re-united" *Saṁsṛṣṭīnah*, 'Of the re-united,' such as the brother &c. who is dead; *saṁsṛṣṭhi*, 'the re-united,' such as the brother &c. shall take the property. *Sodarasya tu*, 'Of the
- 25 uterine brother, however,' *i. e.* (who was) re-united, *sodarah*, 'the uterine-brother,' re-united alone shall take; and not a step-brother. If the re-united die after conception was produced, then upon the birth of the child in the womb, his property one should give to him alone also.

1. The singular number is indicative of the whole class of re-united parceners.

2. Colebrooke adds in bracket (or whole)—but the expression in the text is *sodarāḥ*—meaning he who was born from the same womb. The term 'uterine' may mean the same as 'whole' in those cases where women marry only once. But it cannot be an universal equivalent, as it is possible for a woman to have several sons from different husbands, and such sons although they would be uterine brothers or *sodarāḥ*, will not be 'whole' brothers.

A uterine brother, though not re-united, succeeds to his brother who had separated and had re-united with the father. *Bindra vs Mathura* 6 Luck. 450 (F. B.).

3. *i. e.* born subsequently to the death of the coparcener, the widow's pregnancy not having been noticed then.

4. Ch. XXV. 72.

This (rule as to the) right of the re-united is (applicable) in the absence of the son, wife, father and mother; as says, Brhaspati<sup>1</sup>: "If any one die or enter the fourth order on any account, his property will not lapse, his re-united brother, not being a step-brother, shall take his property." (138).

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(7) Next, in answer to an inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a half-brother re-united, and an uterine brother non-re-united, the Author delivers a reason why both shall take and divide the estate

Yājñavalkya, Verse 139.

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A <sup>2</sup>half-brother, being re-united, may take the succession, but not a half brother not re-united: but one united (*by blood, though not by parcenary*) may obtain the property though not re-united, and not (*exclusively*) the son of a different mother.

Mitākṣharâ (8):—Anyodaryah, a non-uterine brother, i. e. a brother born of a rival wife, being saṁsṛṣṭi, a re-united parcener, takes the estate, na anyodaryo dhanam haret asaṁsṛṣṭi, but not (that) a non-uterine brother does obtain the goods who is not re-united. Thus, by the tests of the affirmative and the negative reasoning, re-union has been shown to be a reason for a half-brother's succession to the property.

15

(9) The term 'not re-united' is connected<sup>3</sup> also with what follows: and hence, even one who was not re-united may take the wealth of a (deceased) re-united (relative). Who is he? (so) the Author says: Saṁsṛṣṭah, one united, i. e. 'one united' by the identity of the womb,<sup>4</sup> in other words, an uterine brother. By this it has been declared, that relation by the identity of the womb is the foundation of the (right of) succession of an uterine brother, though not re-

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1. Ch. XXV. 74.

2. This text also admits of several constructions

3. In analogy of the rule in *Madhyamāni Nyāya* or the 'maxim of the central jewel,' or *Kākāṁkṣi Nyāya*—like a crow looking two ways.

4. Upon this passage the author of the Subodhini remarks: "in like manner, a father, though not re-united with the family, shall take a share of the property of his son, and a son, though not re-united, shall receive a share of the estate of his father from a re-united parcener" and in support of this conclusion he relies upon the passage Manu IX.8. "The husband enters into his wife, and there having transformed himself into a foetus, the wife becomes a mother &c." (See p. 76 ll. 2-5). But Bālabhṭṭa refutes this (at p. 247 ll. 16-20), and he refers in the end to the Mitākṣharâ itself which makes (l. 23.) its own meaning clear by adding at the end that by *it* is meant the uterine brother.

For Mayūkha see text pp. 65-67 & Tr. pp. 118-127 Gharpure's editions.

united in coparcenary. (10) 'The term "united" likewise is connected with what follows; and there the term 'united' signifies one who is 're-united' (as a coparcener ).

5 **Nānyamâtrjaḥ**, *not the son of a different mother*; this expression must be interpreted by supplying the affirmative particle *eva*, 'alone', understood *i.e.* although re-united, one born of a different mother cannot exclusively take the wealth of his re-united parcener.

(11) Thus, by the occurrence of the word *api*, 'though', in the expression "though not re-united" ( above p. 1113 l. 10 ), and by the  
10 denial implied in the restrictive affirmation *eva*, 'alone', understood in the expression "*one united* (by blood, though not by parcenary), *and* "*not the son of a different mother*" (above p. 1113 ll. 10-11 ), it is shown that the property should be divided and distributed to a whole brother not re-united, and a half-brother who is re-united ; [for the reasons of  
15 the right of succession of both subsist at the same time (and independently ).

(12) This very thing is made clear by **Manu**<sup>1</sup> who after premising partition among re-united parcnens : " If brethren, once divided  
"and living again together as parcnens, make a second partition, etc."  
20 "declares; "should the eldest or youngest (of several brothers) be "deprived of his allotment at the distribution, or should any one of "them die, his share shall not lapse. But his uterine brothers<sup>2</sup>, and "such brothers as were re-united, and also his uterine sisters shall "assemble together and divide his share equally. "

25 (13) Thus, among re-united brothers, if the eldest, the youngest or the middlemost,—'at the distribution'—during  
\* PAGE 99. the distribution— (for under the rule of grammar) the indeclinable termination *tas* denotes any case *i. e.* at the time of making the distribution—*be deprived, i. e.* forfeit, his own share, on  
30 account of his entrance into another order, or by the offence of Brāhmicide, or by any other like cause, or if he be dead, his share shall not lapse, but shall be set apart, and not that the re-united parcnens shall take exclusively. This is the meaning.

1 Ch. IX. 210-212.

2 Colebrooke translates 'uterine brothers and sisters.' The expression is *sodaryāḥ*, which may admit of sisters, but these have been again mentioned in the last clause.

The Author states the appropriation of the share so set apart:<sup>1</sup> "his uterine brothers shall divide it &c." That share so set apart, his uterine brothers *i.e.* those born of the same womb, even though not re-united, "having assembled together"—*i.e.* even though they had gone to a different country, still, returning thence and assembling together, they should share it; "Equally" *i.e.* not by any measure of greater or less shares. Likewise those brothers who are non-uterine (but) re-united, and also the uterine sisters, all these should divide (and take) equally. Having divided equally, they should take. This is the clear meaning.

### Vîramitrodaya

It has been stated that 'of one who has departed to heaven without issue,' the successors to the property are the wife, etc.; the Author mentions an exception to it

### Yājñavalkya, Verses 138, 139

*Saṁsr̥ṣṭi*, 'the re-united', "He who being once separated, dwells "again with his father, brother, or paternal uncle, is termed re-united", thus stated by Br̥haspati<sup>2</sup>; one who has property in re-union should take the property of another member re-united who has died without a male issue, and not the wife etc. of the re-united.

*Jātasya*, 'of one born', *i.e.* one who was in the womb at the time of the death of the re-united and who was born afterwards, to such a son of the re-united, one should give the share *i.e.* the property<sup>3</sup> belonging to his father.

Of one, however, with whom the uterine as well as the non-uterine brother have re-united, the wealth of such a one, however, the uterine re-united brother alone will take, and not the non-uterine re-united brother. Here, the reason is, that although non-re-united, a uterine brother alone takes the property of one who has died without leaving a wife and daughter; and not, that when they are living, a non-uterine brother. Moreover, the meaning is that this particular rule is based on propinquity by relationship, even though it is not particularised by a state of re-union.

1. See above page 1114 l. 22.

2. Ch. XXV. 72.

3. तत्पितृसंबन्धिजनं.

By the expression *api cha*, 'even moreover', the Author adds the exception to the rule established before by the text of **Vasiṣṭha** viz.: "When, of an unseparated brother a uterine brother exists, the wife "and the rest shall not take the property". By the word *tu*, first used  
 5 the Author discriminates the right of the wife etc. to take the property; by the second use, the right of the re-united paternal uncle etc. to take the property, and by the third use, the absence of the right of the non-separated non-uterine brother to succeed to the property. By the use of the several *chas*, 'ands', the Author adds the right of the re-united even  
 10 if the wife etc. be existing, and of the uterine re-united brother alone although a non-uterine re-united brother be living, and although a re-united co-parcener be living, the right to the property to be given to the son born after re-union ( 138-139 ).

### Śûlapâṇi

15

#### Yājñavalkya, Verse 139

A non-uterine re-united (brother) shall not take the property of a non-uterine ( brother ).

*Asaṁsṛṣṭyapi*, 'even though un-reunited' a uterine brother alone shall take; not, however, a re-united step-brother. Some expound the word  
 20 *samsṛṣṭa*, 're-united,' as 'united in the uterus,' i. e. a uterine brother.

In the reading 'not a non-uterine shall take the property' the meaning is that if he be a non-uterine brother, he shall not take the property. This<sup>1</sup> is with the object of declaring the right of an un-re-united uterine brother. Therefore it is not open to the fault of tautology.

25 After re-union, if a partition takes place, the share shall be equal, as says **Manu**<sup>2</sup>: "If brethren, once divided and living again together "as parceners, make a second partition, there the distribution of shares "shall be equal; in such a case a deduction for the eldest does not exist."

**Brhaspati**<sup>3</sup> states a special rule: "If among reunited coparceners,  
 30 "any one should acquire additional property through learning. valour, or "other such means; to him an additional share must be given, and the "rest shall be equal sharers" ( 139 ).

1. Note here the difference of opinion between *Śûlapâṇi* and *Vijñāneśvara* according to whom a non-reunited uterine, and a re-united non-uterine brother take together. This he does by implying एव after नान्यमातृजः ( see p. 1114 l. 5 above ). While *Śûlapâṇi* does not imply एव and takes the expressions excluding the non-uterine brother entirely.

2. Ch. IX, 210.

3. Ch. XXV, 77. :



[ Colebrook Sect. X. ]

[ Of exclusion from inheritance ].

(1) What has been said respecting the succession of the son, the widow and other heirs, as well as the re-united parcener, the Author states an exception to that

5

Yājñavalkya, Verse 140.

An important person, one degraded and his issue, one lame, a mad man, an idiot, a blind man, and a person afflicted with an incurable disease, and (like<sup>1</sup>) others, must be maintained, excluding them from any share.

(2) Mitākṣharā:—Klibaḥ, an impotent person<sup>2</sup>, i.e., one of the third gender. Patitaḥ, one degraded,<sup>3</sup> i.e., a Brāhmicide or a like other. Tajjah, his issue, i.e. one born<sup>4</sup> of an outcaste. Paṅguḥ, lame, i.e. one deprived of (the use of) his feet. Unmattakaḥ, a mad man, i.e. one affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influences. Jadaḥ, an idiot, i.e. a person deprived of the internal<sup>5</sup> faculty, meaning one incapable of discrimi-

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1. Ādya. Colebrooke translates "as well as others (similarly disqualified)."

2. "Whether naturally so, or by castration" Colebrooke citing Bāḷambhaṭṭa. Nārada gives several varieties of impotency: see Ch. XIII 10-13 and Bāḷam. p. 250.

3. So a widow who became a mohammedan and re-married, was held to have forfeited her interest in the husband's property. *Vitta Tayaramma vs Chatakondur Sivayya* 41 Mad. 1078 (F. B.)

4. i.e. of one who has not performed the requisite penance or expiation (Bāḷambhaṭṭi p. 250 l. 13).

It should be observed that each disability, excepting that of being degraded, is personal. "Each of the persons specified here is mentioned as being personally incompetent to inherit, except the degraded, in whose case alone it has been stated that his incompetency extends to his issue." See observations at pages 282-283 in *Gangu vs Chandrabhagabai* 32 Bom. 275. See also *Ram Sahye Bhakut vs Lalla Lalji Sahye* 8 Cal. 149 at p. 152 and note.

5. The distinction between 'a madman' *unmatta*, and an 'idiot' *Jada*, is nearly the same as these words convey by their import in the English language. An *unmatta* or 'a madman' is one whose intellect has become completely overpowered by some external force or influence which has established absolute sway over his faculties. Such a man has no interval of sanity at all, while a *jada* or 'an idiot' is not absolutely insane, but he is one who has become so dull in intellect, as not to be able to discriminate things which are advantageous to him, from things which are of no advantage at all. (See Bāḷambhaṭṭi p. 250 l. 14).

Insanity need not be congenital. *Muthusami vs Meenammal* 43 Mad. 464.

nating right from wrong. **Andhaḥ**, a blind man,<sup>1</sup> i. e. destitute of the visual organ. **Achikitsyarogaḥ**,<sup>2</sup> afflicted with an incurable disease, i. e. affected by an irremediable distemper such as marasmus and the like.

(3) Under the expression "Like others" *Ādya*, are comprehended one who has entered<sup>3</sup> into another order, an enemy<sup>4</sup> to his

1. The blindness referred to here means the blindness which is congenital. See Bāḷambhaṭṭi p. 250 ll. 15-16 and the judgment of Westropp. O. J. in. *Morarji Gokuldas vs Parvatibai* 1 Bom. 177, where the opinions of *Sāstris* recorded in West and Buhler's Hindu Law on the subject are examined, as also the original texts in the *Mitâksharâ* and the *Mayûkha*.

So deafness must be congenital. *Savitribai vs Ganesh* 51 Bom. 50 and it must be shown to be incurable.

And dumbness if congenital will exclude. *Bharmappa vs Vijjangauda* 46 Bom. 455.

But see *Mt. Dilraj Kuari vs Rikeshwar Ram* 13 Pat. 712 congenital Blindness does not exclude. The rule has become obsolete. *Surayya vs Subbarama* 43 Mad. 4.

2. *Achikitsyaroga*—*chikitsâ* is the treatment of a disease after determining its cause &c.

*Leprosy*, which is not congenital, does not debar the vesting of the birth-right and therefore when a leper is the sole surviving member of a joint family the property shall vest in him absolutely, so that on his death it will go to his heirs and not as a reverter to the heirs of the last competent holder. *Mool Chand vs Chokta Den* (1937) All. 825 (F. B.)

Leprosy, however, to exclude must be of the sanious or ulcerous and not of the anæsthetic type. *Karali Charam vs Ashutosh Nandi* 50 Cal. 604; 51 I. A. 177 at pp. 178-180 and must be considered to be incurable. *Kayarohana vs Subbarāja* 38 Mad. 250 and in *Vithaldas vs Vadilal* 38 Bom. L. R. 257 it was held that non-congenital leprosy does not disentitle one to be a coparcener, nor does he lose his right in the coparcenary property.

3. The expression in the original is simply *Āśramāntargata*—which literally means, "one who has entered into another order". An *Āśrama* is a stage or period in the life of a man, and these have been laid down as four: viz. (1) *Brahmacharya* or the celibate life—the life of a student; (2) *Gārhaṣṭhya* or *Gr̥haṣṭhāśrama*, the life a house holder, (3) *Vānaprastha*, the life of an anchorite or hermit, and (4) *Sannyāsa*, the life of absolute renunciation. Mr. Colebrooke translates as, "one who has entered into an order of devotion", but in the note the expression used by him is "another order"—and in the explanation is added—"Into one of devotion". He mentions further on as orders of devotion, the *Brahmacharya*, *Vānaprastha*, and *Sannyāsa*. It would appear, however, from the expression used by *Vijñāneśvara* that the exclusion would apply as soon as a change from one order into another took place (see also Bāḷambhaṭṭi p. 250 l. 18).

4. An enemy to his father—the 'enmity to father' referred to here would appear to consist both of an active commission of an act of hostility, as well as in

(Contd. on next page)

father, a sinner in an<sup>1</sup> inferior degree, and a person deaf, dumb or wanting in an organ. Thus, says **Vasiṣṭha**<sup>2</sup>: "They who have entered into another order, are debarred from shares." By **Nārada**<sup>3</sup> also (has it been declared): "An enemy to his father, an outcaste, an impotent person, and one who is a sinner in an inferior degree, take 5 "no shares of the inheritance even though they be *Aurasa*<sup>4</sup> (sons): "whence then (could) the *Kṣhetrajas*". **Manu**<sup>5</sup> likewise ordains: "Impotent

(Contd. from last page)

the omission of the necessary duties enjoined upon a son towards his father. *Asahāya* in his commentary on this verse of *Nārada* (XIII 21) observes: पितरं यो द्वेष्टि स पितृद्विष्टः । द्वेषश्च पितरि मारणादिभावः । मृते तदुद्देशेन उदकादिदानाभावरूपः ।

Tr. "He who hates his father is 'an enemy to his father.' Hatred or enmity consists in the desire to kill the father or to do similar acts, as also the absence of a desire to offer oblations of water &c. to him after his death."

Dr. Jolly observes on this passage as follows, (Sacred Books of the East Vol. XXXIII. p. 194. N. 21).

"The Commentators are at variance as to the precise meaning of the term 'hostile to his father'. Thus the *Sarasvativilāsa* declares it to denote one who forgets himself so far as to say, 'He is not my father.' The *Dāyākramasaṅgraha* says it means one who beats his father. According the *Jagannātha* and the *Ratnākara* it means 'one who attempts his father's life or commits other hostile acts against him; and who fails to offer the customary funeral oblations to his father after his death." See Colebrooke's Digest V. 4. 320.

1. *Aupapātikaḥ* औपपतिकः Colebrooke translates this word in two different ways in § 3 viz., as 'a sinner in an inferior degree' and as 'addicted to vice.' The second translation has been subjected to comment at Allahabad in *Dal Singh vs Musammat Dini* 32 All. 155-158. where the learned judges questioned the correctness of the reading औपपतिक itself and reference was made to Mr. J. C. Ghose's Hindu Law p. 230 where other readings are given. औपपतिक would appear to be a better reading and has been given in the *Nārada Smṛti* edited by Dr. Jolly.

It should be noticed that the commentator on *Nārada* XIII. 21 notices अप्रपानिकः and explains it as राजवधादिदोषेण कृतघटापवर्जनः ।

2. Ch. XVII. 52.

3. Ch. XIII. 21.

4. Colebrooke translates—*Aurasa* as "legitimate" and *Kṣhetraja*—"as sons of the wife by an appointed Kinsman." The two terms have been explained by *Yājñavalkya* and *Viṣṇuśeṣvara* while treating of several kinds of sons (see p. 1045 &c.). From a consideration of the law as stated there, it would be more convenient to use the original terms rather than their English translations.

5. Ch. IX. 201.

“persons and outcastes are excluded from a share<sup>1</sup>; and so are persons  
“born blind and deaf, as well as mad men, idiots, the dumb, and those  
“who have lost an organ<sup>2</sup>.”

(4) *Nirindriyâh*, ‘those who have lost an organ’—any person,  
5 from whom (the use of) an organ has disappeared on account of  
disease or other cause, is said to have lost that organ.

(5) These persons—the impotent and the rest—are excluded  
from a share. They do not participate in the heritage. They must  
be supported by an allowance of food and raiment only. And if  
10 they are not maintained, the penalty of degradation is incurred. For  
**Manu**<sup>3</sup> says : “But it is fit, that a wise man should give all of them  
“food and raiment without stint, to the best of his power: for he, who  
“gives it not, shall be deemed an outcaste.” ‘Without stint’ signifies  
‘for life.’

(6) They are debarred of their shares only if their disqualification  
arose before<sup>4</sup> the division of the property; but not one who had already  
been separated. (7) (And) if the defect be removed by medicaments<sup>5</sup> or  
other means, even though at a period subsequent to partition, the right  
of participation takes effect, by parity of reasoning with the rule ( in  
20 the text<sup>6</sup> ) : “When the sons have been separated, a son who is (after-  
“wards) born of a woman equal in class, shares the distribution.”

1. The original is *Anamśa* अंश “without a share”—this may mean a share  
on partition or from inheritance.

2. निरिन्द्रिय *Nirindriya*—Colebrooke translates: ‘those who have lost a sense  
(or a limb)’—see however, *Vijñāneśvara*’s explanation in the next paragraph.

3. Ch. IX. 202. *Bâlabhattacha* observes by reference to the texts of *Devala*  
and *Baudhâya* that although these writers except ‘an outcaste and his offspring’  
from those entitled to maintenance, still the exception applies to those offences  
only which are inexpiable, and not to those with reference to which expiation is  
possible. See *Bâlabhattachi* p. 250 ll. 29-35 and p. 251 ll. 1-2.

4. i.e. excepting those who were disqualified for natural defects. *Bâlabhattachi*  
p. 251. l. 2.

The right of a member is only under suspense during the disability.

5. See Jaimini VI. 1. 41. अंगहीनश्च तेद्वर्मा p. 308 जैमिनीयन्यायमालाविस्तारः

6. Yājñ. II. 122 (1). See above p. 1022 ll. 15-16,

(8) In speaking of an outcaste and the rest, the masculine gender is not here used<sup>1</sup> restrictively. And hence, it must be understood, that the wife, the daughter, the mother, or any other (female), being disqualified for any of the defects which have been specified, is likewise excluded from participation.

5

### VĪRAMITRODAYA

The Author mentions an exception at some places, to the right of the son, wife, and the re-united to take property

#### Yājñavalkya, Verse 140

By the use of the word *atha*, 'and so', is included one deaf from the time of birth. By the use of the word *ādyā*, 'and like others', are included the dumb, the enemical to the father and like others, vide the text of *Manu*<sup>2</sup>: "Excluded from a share are the impotent and the "degraded, and so are persons born blind and deaf; as well as mad men, "idiots, the dumb, and those who have<sup>3</sup> lost an organ;" and also vide the text of *Nārada*<sup>4</sup> viz: "An enemy of his father, an out-caste, an "impotent person, and one who is a sinner in an inferior degree; these "even though they be the *Aurasa* (sons) do not get a share; whence "shall the *Kṣhetrajās*?"

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15

*Tajjah*, 'born of him', i.e. born of the degraded. *Paṅguh*, 'lame', i.e. deprived of the use of his feet. *Jaḍah*, 'idiot', i.e. having a weak intellectual perception. (140).

20

### ŚŪLAPĀṆI

#### Yājñavalkya, Verse 140

*Tajjah*, 'his issue,' i.e. begotten by the one degraded; *jaḍah*,<sup>5</sup> an 'idiot', a dullard, one not enthusiastic in the performance of a 'religious duty.' *Andho*, 'blind', i.e. congenitally blind. From the text of *Manu*<sup>2</sup> viz. 'Born deafmutes also,' there is no room for a dispute.

25

These i.e. the impotent and the rest, should be maintained for their life-time with subsistence and covering (being offered to them). They are not entitled to a share (140).

30

1. अविवक्षित *Avivakṣhita*, i.e. has been used without any special significance. That is to say the incapacity attaches to all persons alike without regard to sex.

2. Ch. IX. 201.

3. *Nirindriyāḥ*.

4. Ch. XIII. 21.

5. Mark the difference in the angle of vision of the Author of the *Mitākṣharā* and *Śūlapāṇi*. For while the *Mitākṣharā* takes a practical view of it as 'one who is incapable of discriminating right from wrong,' *Śūlapāṇi* takes as the text of a ऋ the want of a desire for religious performance.

(9) The exclusion from a share of the impotent and others<sup>1</sup> seeming to imply the exclusion of their sons also, the Author observes thus

Yājñavalkya, Verse 141 (1)

5 The Aurasa and Kṣhetraja sons, however, of these, if free from defects are entitled to allotments.

(10) Mitākṣharâ:—Eteṣhām, of these, i.e. of the impotent and others; the Aurasa or Kṣhetraja sons, nirdoṣhâh, if free from defects, i.e. which should bar their participation, such as impotency and the like, bhāga-

10 hârinah, are entitled to allotments, i.e. become rightful partakers of shares. (11) Of these, an impotent man is likely to have a Kṣhetraja son, the others may have the Aurasa sons even. The specific mention of the Aurasa and the Kṣhetraja sons is intended to exclude<sup>2</sup> other kinds of sons.

\* PAGE 100.

15 (12) The Author delivers a special rule concerning the daughters of the impotent and other disqualified persons

Yājñavalkya, Verse 141 (2).

The daughters likewise, of these, must be maintained<sup>3</sup> until they are wedded to<sup>4</sup> their husbands.

20 (13) Mitākṣharâ:—Eṣhām, of these, i. e. of the impotent and others, Sutaḥ, the daughters, i. e. the female issue, until they are initiated by

1. i.e. the impotent and others enumerated above in II. 140 at p. 1117 ll. 7-9.

2. i.e. along with their disqualified parents. Bālabhaṭṭa adds ( p. 251 l. 23 ) " A putrikā also gets a share as being equal to an aurasa ", and she too has been included in the word Aurasa " see note further on Yājñ. II. 142 and the observations of Chandavarkar J. in Gangu vs Chandrabhagabai 32 Bom. 275 at pages 282-283 and notes.

3. Maintenance—includes residence, food and raiment. Charandas vs Nagubai 31 Bom. L. R. 1126.

4. भर्तृसात्कृता:—Colebrooke translates; " Until they are provided with husbands." The suffix सात् used with the root कृ means—"join to" or "consigned to" e.g.

अग्निसात्कृत, भस्मसात् &c.

A married daughter will not be entitled to claim maintenance after her marriage. She must seek her maintenance from her husband's family. See Bai Mangal vs Bai Rukhmini 23 Bom. 291 at p. 295.

marriage, so long must they be supported. Under the suggestion of the word *cha*, "likewise," the expenses<sup>1</sup> of their nuptials must be also defrayed.

### Śūlapâṇi

Yājñavalkya, Verse 141

5

*Eṣhâm*, 'of these', as may be possible, *Aurasâḥ*, 'the *Aurasa*' and the *Kṣhetraja* sons, should be made the partakers of the shares of their fathers. Their daughters also so long as they have not been given away in marriage, should be maintained (141).

(14) The Author adds a distinct rule respecting the wives of 10  
disqualified persons

### Yājñavalkya, Verse 142.

The sonless<sup>2</sup> wives, likewise, of these, conducting themselves aright, must be supported,<sup>3</sup> but such as are unchaste<sup>4</sup> should be expelled, and so indeed those who are perverse.

15

(15) Mitākṣharâ:—*Eṣhâm*, of these, i.e. of the impotent and others, *aputrâḥ*, the sonless wives, *sâdhuvṛttayah*, conducting themselves aright,

1. The original expression is *Sanskâryâścha* संस्कार्याश्च i. e. should have the ceremonies performed with reference to them. These ceremonies have been enumerated by Yājñavalkya in Âcârâdhyâya in verses 10-12 pp. 35-41 above; and as regards women, he adds a special rule in 13 (2) thus:—"These rites (are performed) silently for women; their marriage however, (is performed) with Mantra texts." See also Manu II. 26-65; & II. 66-67 for the '*Sanskâra*' for women.

2. Colebrooke Tr. "childless," but the expression in Yājñ. is अपुत्रा *Aputrâ* ✓ and not अनपत्या *Anapatyâ*.

Discussing this text, among others, Chandavarkar J. has held that "the widow of a disqualified person is not excluded from inheritance, merely by her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude from inheritance." *Gangu vs Chandrabhagabai* 32 Bom. at 275.

3. Brother-in-law is bound to maintain a deceased brother's widow if father's self-acquired property descends to him. *Jai Nand vs Samant* 4 Luck. 491 (F. B.)

4. If she lives in adultery, and persists in it, a wife is not entitled to maintenance. *Debi Saran Shukul vs Daulata* 39 All. 234.

But where a wife is found to have lapsed, but to have changed her ways subsequently, she was given a starving allowance. *Sathyabhama vs Keshavacharya* 39 Mad. 658.



- i. e. if they are correct in their conduct, **bhartavyâḥ**, must be supported, or maintained. **Wyabhichârinyâḥ**, the unchaste, however, **nirwâsyâḥ**, should be expelled, **pratikûlâstathaiva cha**, and so indeed those who are perverse, i. e. they deserve to be expelled. But they must be supported, provided they be not unchaste. For, (it is) not that even a maintenance must not be given solely on account of perverseness.

### Vîramitrodaya

- The impotent and the rest being declared to be not entitled to a share, the incapacity of their sons also may follow, as also (might follow) the non-necessity for the maintenance of their daughter, wife etc. The Author refutes that :

#### Yājñavalkya, Verses 141, 142

- Teṣhâm*, 'Of those', i. e. of the impotent and the rest; *Kṣhetrajâḥ*, the 'Kṣhetraja sons', and also the *Aurasa* sons of the impotent and the rest, if they are free from the defect of impotency and the like, become 'entitled to a share', *bhâgaharinyâḥ*.

- Eṣhâm*, 'Of these', i. e. of the impotent and the rest, the *Kṣhetrajâḥ*, and of others than the impotent, the daughters, as long as they have not been joined to their husbands, i. e. made over to a bridegroom, so long should they be 'maintained' very properly i. e. similarly like one's own daughters.

- Eṣhâm*, 'Of these', i. e. of the impotent and the rest, *Yōshitascha*, 'the wives also', who had been married by reason of the impotency not having been determined, *Sâdhuvṛttayah*, 'conducting themselves aright', i. e. if well behaved, then *bhartavyâḥ*, 'should be maintained.'

- Vyabhichârinyâḥ*, 'the unchaste', as also those who are extremely *pratikûlâ* 'perverse', *nirwâsyâḥ*, 'should be expelled,' i. e. should be driven out of the home. By the first *cha*, 'and', is added by inclusion that 'they should have the sacrament performed for them'; and by the second, 'those who indulge in drinking liquor,' etc. By the use of the word *eva*, 'also', the Author excludes the right of maintenance (141-142).

### Sûlapâṇi

#### Yājñavalkya, Verse 142.

Their sonless ( wives ) etc. The meaning is clear. (142)

[ Colebrooke Sec. XI. ]

[ On the separate property of a woman. ]

(1) 'After briefly propounding the division of wealth left by the

1. From here begins the law regarding "a woman's property." The author of the Mitākṣharā does not appear to be inclined to lay down any particular limit to the word *strīdhana*. He has distinctly laid down further on that the term *strīdhana* is to be understood according to its literal meaning, and no technical significance has any scope. The introductory remarks are very significant. The author says that after having briefly described the division of wealth left by the parents, generally, and after having described the devolution of wealth of a male, the sage Yājñavalkya propounds the devolution of wealth obtained by a female. Taking this as it stands, and reading it in connection with the special remarks of Vijñāneśvara about the meaning of the term *strīdhana*, it would appear that according to him, all property acquired by a woman was to be regarded as her *strīdhana*, and this would appear to be in agreement with the general sense in which that term is understood in Western India, or more particularly in the Bombay Presidency. See observations of West J. in *Bhagirthibai vs Kanhujirav* 11. Bom. 285 (F. B.) at p. 299 also *Bhaskar Trimbak vs Mahadeo* 6. Bom. H. C. R. (O. C. J.) 1 at p. 18 and the observations of Candy J. in *Gandhi Magantal vs Bai Jadab* 24 Bom. 192 at pp. 194-206. The application of the principle of *Stare decisis* to questions about the *strīdhana* has worked strange results. For, whereas there may be good authority in Bengal and the allied provinces, for the proposition that 'a woman is incapable of acquiring any property', there is equally good authority for the proposition that "whatever a woman acquires is her *strīdhana*"; and at least in the Bombay Presidency, not only that there would be nothing strange or new in such a proposition, but any other statement of the law would be received with surprise. By a strange combination of circumstances, however, the doctrine that a woman as a rule takes a limited estate *viz.* only *durante vivante*, has come to be engrafted upon the general law of this Presidency, and this on account of the merest accident that cases first went in appeal to the Privy Council either from Bengal or Madras, the appeals from Bombay being of a comparatively later date. The Board in England had before them questions wherein the meaning and significance of passages from the *Mitākṣharā* had to be discussed, and the conclusions once drawn, were engrafted upon decisions and cases in other parts of India, without much regard to the accepted sense of the people of that particular province. It would thus appear that the principle of *Stare decisis* has no application in cases of this nature, inasmuch as there have been no cases as such to give scope for the application of that doctrine. The most recent instances of the strange results of this general interpretation of the texts for all the Provinces will be found in the language of the judgment of *Devi Mangal Prasad Singh vs Mahadev Prasad Singh* 34 All. 234 (P.C.) and *Sheo Shankar Lal vs Devi Sahai* 25 All. 468-30 I. A. and *Sheo Partab, Bahadar Singh vs Allahabad Bank* 25 All. 476-30 I. A. 309.

husband and wife (in the text<sup>1</sup>): “The sons should divide (equally “both the assets and the debts) of the parents.....&c.,” the distribution of a man’s goods has been described at large. The Author, now intending to explain fully the distribution of a woman’s property, 5 begins by setting forth the nature of it

### Yājñavalkya, Verse 143.

What was given (to a woman) by the father, the mother, the husband or a brother, or<sup>2</sup> was received by her at the nuptial fire, as<sup>3</sup> also that which was presented to her on her husband’s marriage to another wife 10 or any other, is denominated ( *strīdhana* ) a “ woman’s property.”

(2) Mitākṣharâ:—That which *pitṛmâtr̥patibhrâṭṛdattam*, was given by the father, the mother, the husband, as also by a brother; as also that which was presented (to the bride) by the maternal uncles and the rest at the time of the wedding, before the nuptial fire; and *âdhivedanikam*, 15 that which was presented to her on her husband’s marriage to another wife, as a gratuity on account of supersession, as will be subsequently explained (in the text<sup>4</sup>): “let him give to a wife who has been superseded &c.”; and as indicated by the word *âdya*, any<sup>5</sup> other, also

1. Yājñ. II. 117 p. 1002 ll. 7-8.

2. i. e. other than the gifts received by her and otherwise described.

3. The original is *cha*. Colebrooke translates ‘Or.’

The *Âdhivedanika* is that kind of a woman’s property, which is given to her as a solace for the grief of supersession by another wife. Yājñavalkya has enumerated the circumstances under which a wife could be superseded, see the *Âchârâdhyâya* Verse 73 and 74 (pages 194, 196 above) and in Verse 75 ( p. 199 ), he lays down a penalty for the supersession of an obedient wife, and gives her a third of the husband’s share. See for this *Vijñâ. II. 148* and the *Mitākṣharâ* thereon. See also *Subodhini* p. 71. ll. 30-31.

4. Yājñ. II. 148.

5. *Âdya*—Any other. This is a very important term in the Smṛti literature, inasmuch as the Smṛti writers and commentators have freely made use of it for taking on such provisions to the existing law as they thought necessary. The word *Âdya* here, as in Yājñ. II. 140, has been utilized to introduce provisions which were not stated in the Yājñavalkya Smṛti. Another term of which similar use has been made is *cha* ꣳ, and it is under cover of this term that the ‘daughter’s son’ has been introduced by *Vijñeśvara* as an heir. ( see above page 1067 ).

property which she may have acquired by inheritance,<sup>1</sup> purchase, partition, seizure, or finding, are denominated by **Manu** and the rest **strīdhana** "woman's property."

(3) The term *Strīdhana* ('woman's property') conforms, in its import with its etymology, and is not technical : for, if<sup>2</sup> the literal sense is admissible, a technical acceptation is improper. (4) As for the enumeration of six sorts of *Strīdhana* by **Manu**<sup>3</sup> viz. : "What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection<sup>4</sup> or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman," that is intended, not as a restriction<sup>5</sup> of a greater number, but as a denial of a less.

( Contd. from last page )

This term *Ādya*, which has sometimes been referred to as "the mysterious *Ādya*" has received so much attention from the courts and so copiously, that it is absolutely unnecessary to refer to any case. It is important, however, to note its derivation and significance. It is derived as आदौ भवः आद्यः. That which was produced first. When used in the Masculine gender it is used to express आदि 'the first'. Other terms used are पूर्व, पौरुष्य and प्रथम. (See

*Derivation.*

Amara III. 1-80 and the Rāmāśrami thereon). It indicates that the word to which it is suffixed is the first of a series consisting of others. Its use with such a word indicates cognate ideas proceeding from such a term. cf. *ejusdem generis*.

1. So according to Vijñāneśvara, wealth obtained by a woman by inheritance, &c., is her *Strīdhana*, and also that the term *Strīdhana* does not admit of any other meaning than can be deduced of its etymological import. ( See Bālabhāṭṭi p. 253 ll. 15-30 ).

2 Cf. with this, the following three maxims which bear the same import.

- (1) अवश्यपेक्षितानपेक्षितयोरपेक्षितं स्मरणियम् ।
- (2) अकल्पाभावकस्याभावकल्पनपेक्षया कल्पाभावकस्यैव तत्कल्पनमुचितम् ।
- (3) नित्यानित्ययोनित्यविधिर्वलवान् ।

It is opposed to the doctrine of Jimuta Vāhana. See note above.

3. Ch. IX. 194.

4. " This passage is read differently by *Ratnākara* and by *Jimuta Vāhana* ( IV. 1. 4 ). It is here translated conformably with Bālabhāṭṭa's interpretation grounded on the subsequent text of *Ītīyāyana* ( further on ), where two reasons of an affectionate gift are stated : one, simple affection ; the other, respect shown by an obeisance at the woman's feet. " Colebrooke.

5. Otherwise, even the six kinds enumerated by *Manu* would be contradicted by the specific kinds enumerated by Yājñavalkya and Nārada. ( See Bālabhāṭṭi page 253 ll. 20-27 ).

- (5) Definitions of *adyadhyagni*, 'presents given before the nuptial fire,' and the rest have been delivered by *Kātyāyana*<sup>1</sup>; "What is given to  
" a woman at the time of her marriage near the (nuptial) fire, is  
" celebrated by the wise as 'women's property', *strīdhanam*, 'bestowed  
5 " before the nuptial fire' *Adhyagni*."

"That, again, which a woman receives while she is being conducted  
"from her father's house<sup>2</sup> is instanced as the property of a woman under  
"the name of 'gift presented in the bridal procession' *Adhyāvāhanikam*."

- 10 "Whatever has been given to her through affection by her  
"mother-in-law or by her father-in-law, as also<sup>3</sup> what is received by her  
"at the time of saluting the feet of the elders is denominated 'an  
"affectionate<sup>4</sup> present' *Prītidattam*."

- "That which is received by a married woman, or by a maiden,  
"in the house of her husband or of her father, from her brother or  
15 "from her parents,<sup>5</sup> is termed *Saudāyikam*<sup>6</sup> 'a kind gift'."

1. Verses 895–897.

2. Mr. Colebrooke adds a note. The *Ratnākara* and *Chintamani* read "from the parental abode". The original expression there is नयमाना हि पैतृकात् and it would make no difference whether it is पितृगृहात् or पैतृकात् both the expressions having the force to indicate "the abode of her father i. e. the parental abode." It may be noticed that the expressions are used in contradistinction with the "husband's abode." (मर्तृगृह). The corresponding Marāṭhi word माहेर would make this quite clear, the idea being that she is being carried from the house of her birth to the new house by marriage.

Property bequeathed by the maternal grand-father is her *saudāyika* *strīdhanam*, which she can alienate without the consent of the husband. *Venkaraddi* vs *Hanmantgoveḍa* 34 Bom.L.R.1144=57 Bom.85. *Muthukarupa Pillai* vs *Sellathammal* 39 Mad. 298.

3. Mr. Colebrooke mentions a reading in the *Smṛti-Chandrikā*—"given to her at the time of making an obeisance at her feet," while no such reading is available either in the Sanskrit Text of the *Smṛti-Chandrikā*, or the translation by Mr. Kṛṣṇaswamy (IX. 2.) The *Smṛti-Chandrikā* simply quotes the text of *Kātyāyana* as here and adds 'पादवन्दनिकं-पादवन्दनाद्यवसरे दत्तम्'. The *Pādavandānikam* (means)—given at the time of the salutation of the feet. And the पादवन्दन is generally made by the newly married bride going for the first time to her husband's abode.

4. See note above. The *Smṛti-Chandrikā* and the *Vīramitrodaya* follow this reading. But the *Ratnākara*, *Chintamani*, and *Vivādi-Chandra* read "denominated an acquisition through loveliness, *Lāvanyārjitam* (लावण्यार्जितम्)." Colebrooke.

5. The Bengal reading is भर्तुः सकाशात्, "from her husband" instead of भ्रातुः सकाशात्.

See Bālabhāṭṭi p. 254 ll. 7–8. He notices the interpretation by the 'Easterns' (पश्चा) on this term and adds at the end, that this is (in addition to and) different from all the property referred to above. 6. Verse 901

Śūlapāṇi

Yājñavalkya, Verse 143

*Adhyagni*, 'at the fire,' i. e. near the fire at the time of the wedding; by the father and others, *dattam*, 'was given'. *Ādhivedanikam*,<sup>1</sup> 'as a solace for her agony,' i. e. at the time of the second marriage, what was given to the former wife.

5

By the use of the word *ādya* 'or any other,' after *ādhivedanika*, are included in the *āvahanika* and others, vide *Kātyāyana*<sup>2</sup>: "that again "which a woman receives while she is (being) conducted from her "father's house, is called *adhyāvāhanikam*, a kind of *strīdhana*." (143).

10

(6) Besides, (the Author says):

Yājñavalkya, Verse 144 (1).

That which has been 'given to her by her kindred', *Bandhudattam* as well as her 'fee or gratuity', *S'ulkam*, or anything 'bestowed after marriage' *Anvādheyakam*.

15

**Mitākṣharâ**:—**Bandhubhiḥ**, by her kindred,<sup>3</sup> i. e. by the *mātrbandhus* as well the *pitrbandhus* of the damsel; **yad dattam**, what has been given,

1. आविवेदनिक i. e. the pain caused to her on account of the husband marrying another wife. As for the आविवेदन and the mutual rights and liabilities of the wife and the husband in that connection see *Āchārādhyāya* Verses X. 73, 74 and 76. Text pages 18-19, and tr. pp. 194-200 above (Part I).

2. Verse 894.

3. "Her kindred"—i. e. her kindred through her parents before marriage, and her kindred through her husband after marriage. These i. e.—the parents and the husband—are the *media* through whom 'her kindred' are to be determined. The kindred of a person—whether male or female—are those who are directly related to such person individually, or mediately through others who are kindred of that person. In the case of a male the three kinds of kindred or *bandhus* have been enumerated above. The case is somewhat different in the case of a female. For, (1) after marriage, her *bandhus* are those of the husband if the marriage be in an approved form. It is only when the marriage is in an unapproved form that her kindred are those in her own individual right, and these would be her children &c. and those relations connected through her parents.

(2) Before marriage, her kindred are either her father's kindred or her mother's kindred which would again mean her father's kindred alone, unless her mother's marriage was in an unapproved form. See further on under verse 145 and also the observations of Chandayarkar J. in *Janghubai vs Jetha Appaji* 32 Bom. 409 at p. 413; *Tukaram vs Ramcaandra* 36 Bom. 339.

i.e. by these. **S'ulka**,<sup>1</sup> the gratuity or fee, that after the receipt of which a girl is given in marriage. **Anvâdheyakam**, what is bestowed after marriage, **anu**, following, i.e. subsequently to the marriage, what has been **âhitam**, deposited, i.e. given.

- 5 (7) It has also been said by **Kâtyâyana**<sup>2</sup>: "What is obtained by  
"a woman from the family of her husband at a time subsequent to  
"her marriage, is called an *Anvâdheya* or 'gift subsequent'; and so also  
"that which is similarly received from the family of her father."—is  
termed "a woman's property:" thus is this passage connected with  
10 that which has gone before.

### Vîramitrodaya

- Thus having in details stated (the law relating to) the property of a male, the Author treats of *strîdhana*, 'the woman's property', with a view to discuss the 'mother's wealth' stated before in the **text**<sup>3</sup>: "Of  
15 "the mother's (property), the daughters (shall take) the residue after  
"(the payment of) debts; in their default, the issue (succeed)."

### Yâjñavalkya, Verses 143, 144 (1).

- By the father and others, given through affection; *adhyagni*, 'in the presence of the fire', i.e. near the fire, at the time of marriage, what was  
20 obtained from even an outsider'. *Âdhivedanikam*, 'on the occasion of supersession', as may be hereafter stated in the text<sup>4</sup>: 'To a superseded wife one should give' etc.

- By the *bandhus*, 'kindred', such as the maternal uncle and others, *dattam*, 'given', through affection; *sulkam* i.e. wealth settled by the  
25 father and others intended to be given to the bride and the bridegroom; *Anvâdheyakam*, 'gifts after marriage', such as stated by **Kâtyâyana**<sup>5</sup> viz.

1. Bâlabhāṭṭa (p. 254 ll. 14-15) states that according to the interpretation of *Kalpataru*, this refers to the property of a sister married under the *Āsura* form. He also states the interpretations put by *Kâtyâyana* and *Vyāsa* on the term *cha*.

2. Verse 899

3. Yâjñ. Verse 117 ( 3rd quarter ) p. 1004, ll. 21-22.

4. Yâjñ. II. 148.

5. Verse 898.



"At a time subsequent to the marriage, what was obtained by a woman from the family of her husband, that is called *Anvādheya*, as also what was received from the father's family." All this kind of *strīdhana* is declared as *Saudāyikam*. By the use of the word *ādya*, 'or any other' is included property transmitted upon the husband's death. By the word *cha*, 'also', are included articles put on by her such as clothes, ornaments etc. The word *eva*, 'only', excludes property which was of the husband's exclusive ownership [143, 144 (1)].

(8) 'A woman's property' has been thus described<sup>1</sup>. The Author next propounds the distribution of it

### Yājñavalkya, Verse 144 (2)

If she pass away without issue, her kinsmen should take it.

(9) *Mitākṣharâ*:—Tat, *it*, *i.e.* the woman's property described before; *afitāyām*, *if the woman pass away, i.e. die*, *aprajasi*, *without issue, i.e. without progeny*; in other words<sup>2</sup> leaving no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; *bāndhavāḥ*, the kinsmen, *i.e.* the husband and the rest, as will be (presently) mentioned *avāpnuyuh*, *should take it*.

### Sûlapāṇi

#### Yājñavalkya, Verse 144

By the father's kinsmen and the mother's kinsmen given. *Sûla* has been described by *Kātyāyana*<sup>3</sup>: "For the furniture in the house, the conveyances, the milch cattle, ornaments and servants, whatever is obtained as the price of these, that has been declared to be known as *Sûla*." *Anvādheya*, however, he has stated thus: "After the marriage, however, what has been obtained by a woman from the family of her<sup>4</sup>

1. *i.e.* as above in verses Yājñ. II. 143 and 144 (1).

See *Bai Kesarbai vs Hansraj Moraji* 30 Bom. 431-443 (P. C.) *Janglubai vs Jetha Appaji* 32 Bom. 409=10 Bom. L. R. 532. *Bhimacharya vs Ramacharya* 33 Bom. 452-456.

2. There is a mistake in the printing of the text on page 101. Instead of दुहितृदौहित्रीपुत्रपौत्र &c. read दुहितृदौहित्रीदौहित्रपुत्रपौत्ररहितायाम्.

3. Verse 899.

4. मातृकुलात्, *Vijñāneshvara* reads भर्तृकुलात्. Other readings are पितृकुलात् and स्वकुलात् and the *Smṛtichandrikā* reads 'भर्तुः' पित्रोः सकाशाद्वा ह्यन्वाधेयं तु तद् धृतुः

"mother, that has been declared as *Anvâdheya*, as also that which was "obtained from the father's family."

This property as also the property of a woman married under the *Āsura* and the like form, who has died without a child, such property  
5 of her as was given by the kinsmen and others, her relations *i. e.* the brothers shall take. As says **Gautama**<sup>1</sup>: "The sister's *śulka* goes to the "uterine brother after the mothers; some hold, even before". 'After the mother' *i. e.* after her death. When the mother and the father, however,  
10 are living, then it goes to these only, vide **Manu**<sup>2</sup>: "That property of "hers as may have been given to her in marriages like the *Āsura* and the "rest, upon her death without progeny, such property is intended to be "for the mother and the father" (144 ).

(10) The kinsmen have been declared generally<sup>3</sup> to be competent to succeed to a woman's property. The Author now distinguishes different claimants according to the diversity of the marriage ceremonies  
15

### Yâjñavalkya, Verse 145

The property of a childless woman, married according to any of the four<sup>4</sup> forms such as the *Brâhma* and the others, goes to her husband; it will go to her daughters, if she leave progeny; and in other<sup>5</sup> forms of  
20 marriage, it goes to her parents.

(11) **Mitâkṣharâ**:—**Aprajasah striyâh**, of a childless woman, as before<sup>6</sup> stated, and who had obtained<sup>7</sup> the *status* of a wife by any of the four

1. Ch. XXVIII. 23-24.

2. Ch. IX. 197.

3. See *Janglubai vs Jetha Appaji* 32 Bom. at p. 414.

4. *i. e.* according to the first four forms which are considered as the 'approved forms' of marriage, viz. the *Brâhma*, *Daiva*, *Ārsha*, and *Prâjâpatya*. See *Mitâkṣharâ* further on.

5. *i. e.* the last four forms called the unapproved forms viz. the *Āsura*, *Gândharva*, *Râkṣhasa* and *Paisâcha*.

6. *i. e.* in *Yâjñ. II. 144. i. e.* without any of the five descendants mentioned above. *Bâlabhatti*. p. 256.

7. *Bhâryâtvaṁ prâptâyâh* (भार्यत्वं प्राप्तयाः) Literally "who has obtained wifehood." Colebrooke translates—"who had become a wife".

modes of marriage denominated *Brāhma*, *Daiva*, *Ārsha* and *Prājāpatya*, (and) who has died, *dhanam*, the property,<sup>1</sup> as before described devolves<sup>2</sup> in the first place *bhartur*, on her husband. On failure of him, it devolves on the *sapinḍas*<sup>3</sup> nearest to him. But *Śeṣheshu*, in other forms,<sup>4</sup> of marriage i. e. (those denominated), the *Āsura*, *Gāndharva*, *Rākṣasa* and *Paiśācha*, *tat*, it, i.e., the property of a childless woman *pitṛgāmi*, goes to her parents. The words *Mātā* (mother) and *Pitā* (father) when combined make up the compound *pitaraū* (both parents). That which goes to these two is *pitṛgāmi*. Although the mother has

1. i. e. the whole property (Bālabhāṭṭa p. 256 l. 22 )"

2. *Bharturbhāvati* ( भर्तुर्भवति ) Lit: "becomes the husband's ( property )."

*Strīdhana*—succession where it was held that marriage in the *Kurao* form was well-recognised in a community in the sense that it was 'approved,' the husband's heirs were held entitled to the *Strīdhana*. *Kishen Devi vs Shev Paltan* 48 All. 126 and in this case the court held ( p. 135 ) that where a particular form was not regarded with disapprobation, the other side must prove that it was not of the approved kind.

To the *strīdhana* property of a woman a son by adoption along with another co-wife, and a son born of another wife succeed equally as husband's *Sapinḍas*. *Gangadhar Bogla vs Hiralal* 43 Cal. 944.

The *strīdhana* of a remarried girl goes equally to the son of her first husband and by the second husband. *Bapu vs Kashinath* 36 Bom. L. R. 140.

Under the V. Mayākha the non-technical *strīdhana* goes to a son in preference to a son's son. *Bai Raman vs Jagjivandas* 19 Bom. L. R. 629 = 41 Bom. 618. As between a legitimate son and an illegitimate daughter born in prostitution the son is entitled to succeed. *Meenakshi vs Mumiandi*. 38 Mad. 1144.

3. Colebrooke translates, "It goes to his nearest kinsmen ( *Sapinḍas* ) allied by funeral oblations." This definition or description of a *Sapinḍa* may be correct under the law in Bengal. The *Mitākṣharā* understands that term quite differently. (See Yājñ. I. 52 pages 150–151 and *Lallubhai vs Mankooverbai* 2 Bom. 388 at p. 423. See also Telang J. in *Gojabai's* case in 17 Bom. 114 at p. 117 and *Parmappa vs Shiddappa* 30 Bom 607 = 8 Bom. L. R. 685. See also note 1 on page 1071 above.) This translation therefore of the term *sapinḍa* is not good so far as the *Mitākṣharā* is concerned, and has been criticised in several cases the most recent of which is *Nanja Pillai vs Sivabaggathachi* 36 Mad. 116 and cases, cited there. As regards the succession of the husband's *sapinḍas* see *Krishnabai vs Shripati* 30 Bom. 333 = 8 Bom. L.R. 12. *Bai Kesarbai vs Hunsraj Morarji* 30 Bom. 431 (p. c.) at p. 443. And generally also *Janglubai vs Jetha Appaji* 32 Bom. 409 at pp. 412–413; and *Tukaram vs Narayan* 36 Bom. 339 at p. 345 (F. B.).

4. i. e. the remaining four called the unapproved,

already been indicated in the elliptical<sup>1</sup> compound, still her prior (right of) succession has already been<sup>2</sup> specifically mentioned before. On failure of them the (right of) succession is that of their<sup>3</sup> nearest relations<sup>4</sup> by propinquity.

- 5 (12) Indeed in all forms<sup>5</sup> of marriage, if the woman be **prasûtâ**,  
     *leave progeny, i.e. if she leave issue, tat, it, i. e. her*  
     Course of inheri-      property, **dubhitṛṇām**, *will go to her daughters*. Here,  
     tance.                      by the term 'daughters', 'daughter's daughters'  
     are<sup>6</sup> expressed; since the daughters themselves have been expressly  
 10 mentioned in the (preceding<sup>7</sup>) text : "Of the mother's (property) the  
     "daughters (shall take) the residue &c." (13) Hence also, upon the  
     death of a mother, the daughters first take the mother's property.<sup>8</sup>  
     And there also, in the case of a competition between the married and  
     the unmarried, the unmarried (take). But on failure of these, the  
 15 married (take). And there also, in the case of a competition between  
     such as are endowed<sup>9</sup> and those who are unendowed, the unendowed

1. Called the *Ekaśeṣha* uni-residual *Dvandva*. In this compound only one word is retained and the others are dropped, the one word remaining having the capacity to express the others dropped. See note 3 on p. 1091.

2. *i. e.* p. 1091 l. 3.

3. Their, *i. e.* of the parents. See note 3 above on page 1129. For a fuller discussion on the meaning of the pronoun *तत्र* see *Tukaram* vs *Narayan* 36 Bom. 339 (F. B.)

4. *Tatpratyaśannânām*—*Pratyāśannas* are those relations whose claim is based on propinquity. Colebrooke translates "their next of kin."

5. *Sarveṣṭheva*—*i. e.* as regards the right of succession of the issue, they take precedence in all cases, irrespective of the particular form of marriage. But the issue or progeny here means her own issue and not the issue of a co-wife. The particular case of the succession of the daughter of a cowife of a superior class would not otherwise have been specially mentioned. See also *Bhimacharya* vs *Venkappacharya* 33 Bom. 452, where the husband was allowed preference over a step-son. *Bālabhāṭṭa* notes several readings. See p. 257.

6. *Uchyaṇte*—उच्यन्ते *i. e.* are expressly signified, and not merely to be inferred.

7. Of *Yājñavalkya* II. 117. See p. 1004 ll. 21-22.

8. *Mātrḍhanam* *i. e.* the *Strīdhana* of the mother.

9. *Pratiṣṭhitā*—*i.e.* well established in life, well provided for. Comparative poverty is the only criterion in cases of competition between the married daughters, and it is not intended that an inquiry should be held going into all the

(Contd. on next page)

take (the succession first); and on failure of them, those who are endowed. As says **Gautama**<sup>1</sup>: "The *Strîdhana* property goes to the "daughters unmarried,<sup>2</sup> and (failing them) to the unendowed." Here the use of the particle *cha*, 'and', makes it devolve on the endowed also. "Unendowed" are such as are without issue or are destitute of wealth.

5

Exception—*Sulka*. (14) But this (rule holds) with the exception

of the *S'ulka*. For, the *S'ulka* goes to the uterine brethren only, *Vide* the text of **Gautama**:<sup>3</sup> "The sister's *S'ulka*<sup>4</sup> belongs "to the uterine brothers, after (the death of) the mother<sup>5</sup>."

(Contd. from last page)

minute details of income &c. See Ranade J. in *Totava vs Basava* 23 Bom. 229. "When, however, the difference in wealth is marked, the law requires that the whole of the property should go to the poorest daughter." *Ibid*; and also cases cited on pages 252 and 253 of the report. The Unendowed are explained further on as being those who are without issue or are destitute of wealth.

In *Bayava vs Parteva* 36 Bom. L.R. 118 it was held in the case of a male that a posthumous daughter was entitled to succeed.

1. Ch. XXVIII. 22.

2. The unmarried excludes the married. *Sheo Govind vs Ram Adhin*, 8 Luck. 182.

3. Ch. XXVIII. 23, 24.

4. *S'ulka*—Colebrooke translates this as 'the fee or gratuity.' This is in accordance with the explanation given in *Kalpataru* and quoted by Bālabhāṭṭa on (p. 254-14), आसुरादिविवाहोदया भगिन्या वनम् Tr. "The property of a sister married according to the *Āsura* or similar forms of marriage" i. e. the bride-price. To the same effect is Haradatta on Gautama's text. Bālabhāṭṭa notices two other definitions or descriptions of this kind, of *Strîdhana*, viz. those given by Kâtyâyana and Vyâsa — *Kâtyâyana* defines it as

गृहोपस्करवाह्यानां दोह्याभरणकर्मणाम् । मूल्यं लब्धं तु यत्किञ्चित्कुलकं तत्परिकीर्तितम् ॥

Tr. "Whatever is obtained as the equivalent of household utensils, of beasts of burden, of milch cattle or ornaments, is declared (to be) *Sulka*"; and this has also been cited in the *Vyavahâra*—*Mayûkha* and *Dâyabhâga* IV. 3. 19-20.

*Vyâsa* defines it as : यदानीनं भर्तृगृहे शुलकं तत्परिकीर्तितम् and Bālabhāṭṭa explains it as: भर्तृगृहगमनार्थमुत्कोचादि यदत्तं तदित्यर्थः i. e. presents &c. given to induce her to go to her husband's house, and thus it is very much like the *Adhyâvâhanika*. See *Dâyabhâga* IV. I. 6.

5. This interpretation is according to that given in *Subodhini* (p. 77. i. 5). Bālabhāṭṭi (p. 257 l. 22); and *Kalpataru* explain it similarly, and so also Haradatta. The *Dâyabhâga*, however, interprets it differently. According to

(Contd. on next page)

(15) On failure of all the daughters, the daughters' daughters take Daughter's children. under this text<sup>1</sup>: "It will go to the daughters if "she leave progeny, &c."

(16) If there be a multitude<sup>2</sup> of these (and if they be) children of 5 different mothers, and unequal in number, shares should be allotted to them through<sup>3</sup> their mothers, as directed by Gautama<sup>4</sup>: "Or, according "to the mothers,<sup>5</sup> let the special share (be adjusted) in each class."

(17) If there be daughters as well as daughters' daughters simul-  
taneously<sup>6</sup>, a trifle only should be given to the  
10 Daughter's daughters. daughters' daughters. As has been directed by  
Manu<sup>7</sup>: "Such of the daughters of those (daughters)  
"as may exist, even to those, something<sup>8</sup> should be given, as may be  
"fit, from the property of the grand-mother, on the score of affection."  
(18) On failure also of the daughters' daughters, the daughters' sons  
15 Daughter's sons are entitled to the succession. As says Nārada<sup>9</sup>:  
"(Let) daughters (divide) their mother's (wealth);

(Contd. from last page)

the Dāyabhāga, first the uterine brothers &c.—and then after them, and in their absence, the mother, and then the father &c. take (see IV. 27-29). Bālabhāṭṭa explains 'Mother' here, to be the woman herself *i. e.* the sister herself. (See Bālabhāṭṭi p 757 l. 23).

1. *i. e.* Yājñ. II. 145 (3rd quarter).

2. *Samavāya* (समवाय)—is a collecting together of persons with conflicting claims.

3. The principle of the rule enumerated here is the same as laid down in regard to the property of a male; where several persons lay claim *through* their respective *male* ascendants *i. e.* that laid down in Yājñ. II. 120 (p. 1017 ll. 23-24.)

4. Ch. XXVIII. 15.

5. *i. e.* the share of a particular claimant is to be determined by regard to the number of her mother's sisters, as well as that of her sisters, in other words, *per stirpes* first, and then *per capita*.

6. Here the word *Samavāya* does not predicate any claim on behalf of the daughters' daughters. It only indicates their co-existence along with the daughters.

7. Ch. IX. 193.

8. *Something*, किञ्चित्—Kullūka holds that the grand-daughters should be unmarried. *Sarvajña Nārāyaṇa* says, "When the married daughters are dead, their daughters shall be presented at will by their maternal uncles with the share which their mothers would have received as a token of respect," *Rāghavānanda* too thinks that "on the score of affection" means 'at the pleasure (of the heirs)'. But *Nandana* deduces from the same term the absolute necessity of the gift. Bühler.

9. Ch. XIII. 2.

"or, on failure of daughters, their (male) issue."<sup>1</sup> For, the pronoun *tat*, *it*,<sup>2</sup> refers to the continuous term 'daughters'.

(19) If there be no daughters<sup>3</sup> sons, sons take (the property); for it has already been declared<sup>4</sup>: "In their default, the (male) issue (succeed)." *Manu*<sup>5</sup> likewise shows the right of daughters as well as of sons to the mother's effects: "But, when the mother is dead, all the uterine brothers shall equally divide the mother's property, and also the uterine sisters." (20) The maternal estate, all the uterine brothers should divide equally, and also the uterine sisters should divide equally: such is the construction. And the meaning is not that 'uterine brothers and sisters share together'<sup>6</sup>; for since the abridged<sup>7</sup> form of the conjunctive compound has not been employed, reciprocation<sup>8</sup> cannot be (construed to have been) indicated;

1. तदन्वयः—The *Smṛtichandrikā* interprets this as 'the female issue' स्त्रीर्गमि-धनत्वात्स्त्रीरूपान्वय इति च गम्यते (See p. 286 l. 2). Colebrooke translates as "(male) issue".

2. See Bāḷambhaṭṭi p. 258. The result as to the order of succession, on account of this note of the Mitākṣharā is as follows:—

"After the mother, her daughters take the *strīdhana*, in the absence of the daughters, from those among her issue, the daughter's daughter take first, then the daughter's son, &c.

Jīmūta Vāhana seems to have understood the pronoun *it* as referring to the word "mother". See Dāyabhāga IV 2-13.

3. Colebrooke translates "If there be no grandsons in the female line."

4. Yājñ. II. 117. (p. 1030 l. 20 above). See Bhīmacharya vs Ramacharya 33 Bom. 452 at p. 456.

5. Ch. IX. 192- The *Kalpataru* reads: *Sarve putrāḥ sahodarāḥ*. (See Bāḷambhaṭṭi p. 259 l. 18.)

6. *Sambhūya*—i. e. together at a time. The meaning is that the two sets of heirs viz. the uterine sisters and uterine brothers, do not take together, but that each set takes separately.

7. See notes on p. 1091, 1092 (*supra*) as regards the several meanings of *cha* and the characteristics of an *Ekasēṣha* compound.

8. If reciprocation were meant to be indicated in the text of *Manu*, the word *Bhrātṛ* 'brother' would have been used inflected, however, in the dual number to denote 'brother and sister' (*Pāṇini* I. 2-68), or else 'childless' or some generic term, would have been employed in the plural (*Pāṇini* I. 2-64). But the text is not so expressed; consequently reciprocation is not indicated. See *Subodhini* p. 77 ll. 19-25. Bāḷambhaṭṭa.



the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yajñadatta also." (21) "Equally"<sup>1</sup> is specified to forbid the allotment of deductions.

5 "Uterine"<sup>2</sup> is used (with a view) to exclude the non-uterine.<sup>3</sup>

(22) The *Strīdhana* of a childless woman belonging to an inferior<sup>4</sup> tribe, however, the daughter of a co-wife<sup>5</sup> of a superior tribe takes Step-daughter. though springing from a different mother.

\* PAGE 102.

10 On failure of her, her issue (shall succeed). *Vide Manu*.<sup>6</sup>: "What-ever property of a woman may exist, such as had been in any manner given to her by her father, let the daughter of a Brāhmaṇi "co-wife take; or let it belong to her offspring." (23) The mention of a Brāhmaṇi includes by implication (the daughter belonging to) any superior class. Hence the daughter of a Kṣatriyā<sup>7</sup> co-wife takes the  
15 goods of a childless Vaiśyā co-wife.

1. As has been laid down in the law regarding the property of a male *e. g.* See Yājñ. II. 114 p. 994 l. 10 *supra*.

2—3. Colebrooke translates—whole blood. The expression in the text is *sodara*—belonging to the same *uterus*. The expression used by Vijñāneśvara in this same passage is *Bhinnodara*—which has been translated as *non-uterine*. Colebrooke translates as half-blood which is not sufficient. (See note p. 1098 *supra*.)

4. This is in accordance which those provisions under which intermarriages among several *varṇas* appear to have been in force. See *Yājñavalkya Âchârâdhyâya* Verses 57 (p. 168); 88 p. 236; 90 (p. 241) and *Vyavahâra* Verse 125 p. 1033.

5. This word is derived as follows: समानः एकः पत्निरस्याः सा सपत्नी—She whose husband is equal *i. e.* the same (as the other) is a co-wife. The form is based on the rule नित्यं सपत्न्यादित्थं (Pāṇinî IV. 1. 35): "In forming the feminine with the affix ङीप्, the word पति always takes the substitute च् in the words like सपत्नी and the like *e. g.* वीरपत्नी, एकपत्नी &c. Colebrooke translates as 'a rival wife.'

6. Ch. IX. 198. 'Her offspring' or 'issue' (Colebrooke). *Apatya* (अपत्य)—here refers to the daughters alone. See *Sarvjñanârâyaṇa*. Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughter of a Brāhmaṇi wife, and in her absence to her offspring *i. e.* the female offspring.

7. This inference is contested by Śrīkrishṇa in his commentary on the *Dâya-Bhāga* of *Jīmâtā-Vâhana*. Colebrooke.

(24) On failure of sons, grandsons inherit their paternal-grand-  
Sons' sons mother's wealth. For Gautama:<sup>1</sup> says: "They, who  
"share the inheritance, must pay the debts:" and  
the grandsons are bound to discharge the debts of their paternal-  
grand-mother; for the text<sup>2</sup> expresses: "Debts must be paid by sons"  
"and sons' sons."

(25) On failure of grandsons also, the husband and other relatives  
Husband and others. above mentioned<sup>3</sup> are successors to the wealth.

### Vīramitrodaya

Thus by discussing the *stridhana*, has been discussed the mother's  
property. Of a woman who had no issue born, or of one all of whose  
sons and daughters are dead, there being an absence of motherhood,  
which is the counterpart of a living (child), who shall take the prop-  
erty? So the Author says:

### Yājñavalkya, Verses 144 (2), 145

*Aprajāyām*, (when) 'without issue', *i. e.* without a living daughter  
and son or any of them, *atitāyām*, (when) 'she passes away', *tat*, 'that'  
*i. e.*, the *stridhana*, *bāndhavāḥ*, 'the kinsmen', *i. e.*, her relations, *avāp-  
nuyuh* 'shall get'.

Here, moreover, this is the special rule: in the case of a woman  
married according to the (four forms) *Brāhma*, *Dāva*, *Ārsha* and *Prājā-  
patya*, the *stridhana* of a childless woman, goes to the husband. In the  
case of the remaining four forms of marriages—by the use of the word *api*,  
'even', even when there is no marriage—her property goes to the father.  
If, however, she be offered in marriage and is devoid of a son or a  
daughter, then that property becomes of the daughters as their own.  
In their absence, moreover, the daughter's son, mentioned before by the  
word 'issue', becomes entitled to the property, as under the text of *Manu*

1. Ch. XII. 40. Cf. Yājñ. II. 51. p. 795 *ante*.

2. See Yājñ. II. 50 p. 792 l. 7 *Supra*. The two texts run thus:

(1) The sons and grandsons should pay off the debts &c.

(2) Those who take the inheritance, must pay the debts. From these  
an inference follows that the sons and grandsons take the inheritance.  
(See *Subodhini* p. 77 ll. 30-31 and *Bālabhaṭṭi* p. 260 ll. 14-15). For such an  
inference, however, one more premise is wanting viz. those who pay the debts,  
take the inheritance.

3. *i. e.* in Yājñ. II. 144.

stated above even when the daughter is living some portion is indicated for the daughter's son.

Here in the case of the *Brāhma*, *Daiva*, *Ārṣha* and *Prājāpatya* forms of marriages the property "which a woman dying without issue  
5 "leaves, that is intended for the husband only", by this text of *Manu*<sup>1</sup> it should be noted that in the case of a *Gāndharva* marriage the share of the husband and the father is equal. (144, 145).

### Sûlapâṇi

#### Yājñavalkya, Verse 145

10 In the case of marriages like the *Brāhma* and the rest, the property of a childless woman, goes to the husband. If, however, there be daughters born of her, then (it goes) to them. In the case of the remaining *i. e.*, the *Āsura* and the other forms, it belongs to the mother and the father alone.

The right of the mother's sister and the rest to the property in the  
15 absence of the husband and the rest, has been stated by *Bṛhaspati*:<sup>2</sup> "The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, father's sister, the mother-in-law, and the wife of an elder brother—all these have been declared to be like mothers. When of these  
20 "an *aurasa* son does not exist, or a daughter's son either, or their son also, "then the sister's son and the rest<sup>3</sup> shall take their property." (145).

(26) On the occasion<sup>4</sup> of treating of *Strīdhana*, the Author adds something concerning a betrothed maiden

#### Yājñavalkya, Verse 146 (1)

He who after having given his daughter, takes her<sup>5</sup> (back), shall be  
25 punished<sup>6</sup> and should also (be compelled to) make good the expenses together with interest.

1. Ch. IX. 196.

2. Ch. XXV. 88-89

3. These words include other relations of the husband or father. Sec. 33I. A. 176 at p. 197. These do not necessarily take in the order of enumeration, 'The question of priority is determined by the rule of propinquity—per Chandaraup J. in *Hansraj vs Bai Moghibai* 7 Bom. L. R. 622/631; 33 I. A. 176. The Madras High Court has ruled that this text has no application to the right of succession to a maiden's property. *Sundaram vs Ramasami* 43 Mad. 32, at p. 36.

4. *i. e.* as having a reference to the subject under discussion &c.

5. Colebrooke translates, "For detaining a damsel, after affiancing her" &c. *datvâ i. e.* having given or offered; and *haran—i. e.* 'taking back.'

6. *Dandyaḥ—i. e.* is liable to a penalty, which may be in the form of a fine, imprisonment, or any other form of punishment. Colebrooke translates "should be fined."

(27) **Mitākṣharâ**:—**Kanyâm datwâ**, a damsel verbally, *having given, apaharan*, one who *takes her (back)*, shall be punished by the king, by regard to the amount of the property or the magnitude of the offence, and similar other circumstances. This, moreover, (is applicable) if there be no (sufficient) reason for the retraction. But, if there be good cause, he shall not be punished, since retraction is authorized in such a case (by the text<sup>1</sup>): “A damsel, although given, one may even take “back, if a better bridegroom presents himself.” 5

(28) Whatever has been expended, on account of the espousal by the (intended) bridegroom for the gratification<sup>2</sup> of his own or the damsel's relations, must be repaid in full, with interest, by the affiancer<sup>3</sup> to the bridegroom. 10

(29) Should a damsel, anyhow<sup>4</sup> affianced, die before the completion of the (marriage) ceremony, what is to be done in that case? So the Author replies 15

**Yājñavalkya, Verse 146 (2)**

If she die (after troth plighted) the bridegroom should take back the gifts which he had presented, after deducting the expenses on both sides.

(30) **Mitākṣharâ**:—If a betrothed damsel die, then, whatever had been previously given by the bridegroom such as a ring and similar other presents, the bridegroom shall take back **parisodhyobhayavyayam**, deducting the expenses on both sides; the expenses of both *i. e.* of himself and of the person who offered the bride; **parisodhya**, after deducting, *i. e.* taking<sup>5</sup> account of that, the balance (thus remaining) he may take. 20

What, however, was given to the damsel by the maternal-grandfather, or other relation,<sup>6</sup> such as the head ornament and other gifts, 25

1. Yājñavalkya I. 165 p. 184.

2. *Upachārārtham* (उपचारार्थम्) *i. e.* by way of offering hospitality to.

3. *i. e.* the parent or guardian of the bride.

4. *i. e.* either by proper religious rites, or by taking by hands, or in any other manner. (See Bālabhāṭṭa p. 270 l. 16).

5. *Vigamayya*. Bālabhāṭṭa considers this as a bad reading. He prefers *Vigamayya* “removing” or “discharging” (p. 270 ll. 19-20.)

6. Such as the paternal uncle. Bālabhāṭṭa.

as well as property inherited by her in her right of succession, (all that) her uterine brothers shall take. For Baudhâya<sup>1</sup> says : “ The  
“wealth of a deceased damsel, let the uterine brethren themselves take.  
“On failure of them it shall belong to the mother ; and in her absence,  
5 “to the father.”

### Vîramitrodaya

On the occasion of (treating of) the stridhana, the Author mentions the disposal of property taken by the father and others for the marriage of a woman in the *Āsura* form who was promised by word of mouth

#### 10 Yājñavalkya, Verse 146

*Kanyām*, ‘a maiden’, having by a word of mouth, *datvâ*, ‘promised to give’, *haran*, ‘one taking her back’ *i. e.* does not give to him, such a one *dandyaḥ*, ‘should be punished’ by the King, by regard to the amount (invested) and other circumstances. *Vyayam*, ‘expenses’, *i. e.*, the amount  
15 of money spent by the bridegroom for the purpose of the marriage. *Sodayam*, ‘together with interest’, *dadyât* ‘should give.’

The person giving the promise by word in the case of the death of the maiden under a misfortune, after having corrected for the expenses of both *i. e.*, of oneself and of the bride’s father and others, such a one  
20 *i. e.* the bridegroom may take back what was given by himself such as clothes, ornaments, gold etc., not however interest. By mentioning correction, it has been pointed out that where there is an absence of an excess over what was spent by the bride’s father, nothing should be taken. By the use of the word *cha*, ‘also’, is intended the simultaneity  
25 of the expenses, gift, and the penalty. (146).

1. Appendix B. 7 p. 125 (Leipzig Edition 1884.)

“This is a special solitary text which has necessarily to be supplemented by other texts such as those quoted in *Dâyakrama* (D. K. S. II. 1-2.), or from the general law of *Stridhana*; and where this law also fails, from the still more general law of succession (*Mitâkṣharâ* II. 11-19-25). The special rules of *Stridhana* succession have thus to be expressly or impliedly supplemented from *Paithinasi* or *Nârada*. (*Vîramitrodaya* 241)’ per Jenkins C. J. in *Gandhi Maganlal vs Bai Jadab* 24 Bom. 192 at pp. 211-212 (F. B.). See also the observations of Chandavarkar J. in *Janglubai vs Jetha Appaji* 32 Bom. 409 at pp. 411-412.

Śūlapāṇi

Yājñavalkya, Verse 146

He who by a word of mouth, *Kanyâm datvâ*, after 'having given his daughter,' *haran* 'takes her back,' without a cause, becomes *danḍyo* 'liable to be punished.'

5

Whatever had been given by the bridegroom, such as gold etc., that the father of the bride shall pay back with interest.

When a maiden who by a word of mouth has been promised to be given, whatever was respectfully given by way of customary presents to the relations of the father and the relations of the bridegroom, after deducting both these, whatever may remain as the residue of the *Sulka*, all that, the bridegroom may take. (146)

10

(31) It has been declared, that the property of a woman dying without issue, goes to her husband. The Author now shows that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and even though she have issue

15

Yājñavalkya, Verse 147

A husband is not liable<sup>1</sup> to make good the property of his wife ( when it was ) taken<sup>2</sup> by him in a famine, or for ( the performance of ) a religious duty, or during illness, or while under restraint.

20

(32) *Mitākṣharâ*:—*Durbhikṣhe*, in a famine, for the maintenance and preservation of the family. *Dharmakârye*, for a religious duty, which must necessarily be performed; and also *vyâdhau*, during illness, or *sampratirodhake*, while under restraint, or confinement in prison or under corporal penalties, being destitute of other funds, and therefore taking his wife's property, *bhartâ na* [ punar ] *dâtumarhati*, the husband is not liable to repay. But if he seize in any other manner, he must pay.

25

(33) With the exception of the husband, the property of a woman must not be taken in her life-time by any other kinsman or heir since

1. See Bâlabhāṭṭi ( p. 270 l. 29 ). There is no obligatory rule of the law that he must necessarily pay ( back ). Otherwise it would have been said " he should not pay." अवश्यदेयमिति नियमो नास्त्यर्थः । अन्वया न देयमित्येव द्रष्टव्यम् ।

2. गृहीतं II. 148 Taking, means taking and using. Therefore when property is not used, it should be returned. *Nammahwar vs Thayarammal* 50 Mad. 941.

punishment is denounced<sup>1</sup> (against such conduct) : “ Their kinsmen,  
 “ who take their goods in their life-time, a virtuous king should chastise  
 “ by inflicting the punishment of theft.” Similarly, it is pronounced  
 an offence :<sup>2</sup> “ Such ornaments, as are worn by women during the  
 5 “ life-time of their husband, the heirs of the husband shall not divide  
 “ among themselves; they who do so are degraded from their tribe.”

### Vîramitrodaya

The heir to the *strîdhana* of a deceased woman has been discussed  
 before. The Author mentions who may take her property during  
 10 ( her ) life-time.

### Yājñavalkya, Verse 147

*Sampratirodhake*, ‘while under restraint’, such as when he is under  
 imprisonment or the like. By the use of the word *cha*, ‘and’, is added  
 the general qualitative condition *viz.* when the husband’s property does  
 15 not exist. The rest is easily intelligible. (147).

### Sûlapâṇi

### Yājñavalkya, Verse 147

*Sampratirodhake*, ‘while under restraint,’ the meaning is, what was  
 taken by one of a higher *varṇa* causing obstruction for meals etc. (147)

20 PAGE 103\*

(34) A present made on her husband’s marriage to another wife  
 has been mentioned as a kind of *Strîdhana*. The Author describes  
 such a present

### Yājñavalkya, Verse 148

25 To a superseded wife, let him give an equal sum for the supersession;  
 (i. e.) to her to whom no (*Strîdhana*) separate property has been given; but  
 if any have been assigned, let him allot<sup>3</sup> a half.

1. Bâlabhāṭṭa ascribes this text, to *Nârada*, but it is not found in the  
 published edition of that writer by Dr. Jolly. The text, is found however, in  
*Manu* at Ch. VIII. 29. See the observations of Medhâtithi on this verse. The  
*Chauradanda* ( चौरदण्ड ) or “punishment of theft” referred to here has been given  
 later on by *Manu* at Ch. VIII. 334.

2. *Doṣha*—a dereliction, a transgression : *Manu* Ch. IX. 200.

3. प्रकल्पयेत् is a better reading; the reading प्रकृतिं तस्मै adopted in the print is  
 not good. Bâlabhāṭṭa characterises it as a bad reading ( अग्रपठ ), and rightly.  
 That would necessarily require it to be in the neuter gender.



(35) Mitākṣharâ:—She over<sup>1</sup> the marriage of whom (another) marriage is contracted is a *superseded*, *adhivinnâ*. Such a one who is a wife is a 'superseded wife'. To her *adhivinnastriyai*, i. e. to a *superseded wife*, *âdhivedanikam*, for the supersession, i. e. on account of the supersession. An amount *samam*, equal, to what is expended on the second marriage; to such an extent, should be given; *yasyai strīdhanam na dattam*, to her (i. e.) to whom no separate property has been given, by her husband or by her father-in-law. But if *datte*, any *strīdhana* had been assigned, *ardham*, half, the sum expended on the second marriage should be given. Here, however, the word 'half' (*ardha*) does not intend an<sup>2</sup> exact moiety. So much therefore should be paid as will make the wealth already conferred on her equal to the prescribed amount of compensation. Such is the meaning.

Vīramitrodaya

The Author expounds the *Ādhivedanika strīdhana* mentioned before

Yājñavalkya, Verse 148

*Adhivinnâ*, 'superseded', i. e., a woman over whom a co-wife has been brought in, to such a one *Ādhivedanikam*, 'pertaining to supersession', i. e., on account of marriage with a co-wife, *dhanam*, 'wealth', equal to the property given to the one who is being married, should be given to the (former) wife to whom *strīdhana* had not been given. If, however, *strīdhana* had been already given before, then half of the property given to the (new) wife who is being taken in marriage, has been declared to be given to the superseded wife. (148).

1. *Adhivinnâ* is derived from *Adhi* i. e. over, and *vinnâ* i. e. married (from *vid* 'to marry') तदस्या अस्तीति. The compound is formed after the rule in Pāṇini V. 2. 127 —'अर्श आद्यच्.' Money which was obtained on account of the *Ādhivedana* or 'Supersession', is the *Ādhivedanikam* under the rule तस्य तन्निमित्तम् (Pāṇini V. I. 38).

2. The word *Ardha* (half) is used here in the masculine number and therefore not necessarily equivalent to half; it signifies a portion in general. See *Amara* I. 3. 16. *Subodhini* p. 78. See also Bāṇabhṭṭi. p. 271 ll. 19–21, where Bāṇabhṭṭi has established that in whichever gender the word be taken, it indicates a portion, rather i. e. a complement of the amount already received to make a half, and not a half exactly.

## Śûlapâṇi

## Yājñavalkya, Verse 148

To a wife for whom a co-wife has been brought, on account of the supersession an equal amount should be given. The meaning is, that as  
 5 much as is given as a respectful gift to the new wife after her marriage, so much (should be given). If *Stridhana* had been given, then a half should be given. (148)

[ Colebrooke Sec. XII. ]

[ On the evidence of a partition ].

10 (1) Having thus explained the law of distribution of the heritage, the Author next propounds the evidence by which it may be proved in a case of doubt

## Yājñavalkya, Verse 149

When partition is denied, the fact of the partition may be ascertained  
 15 by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by (proof of) separate possession of houses or fields.

(2) *Mitâkṣharâ* :—If a partition be denied or disputed ( then )  
*vibhâga-bhâvanâ*, the fact of the partition, i. e. the certainty of the parti-  
 tion may be obtained by the testimony of *jñâtibhiḥ*, kinsmen, i.e. of the  
 20 *Pitrbandhus*, *Mâtrbandhus* such as the maternal uncle and the like;  
*sâkṣhibhiḥ*, witnesses viz. possessing the qualifications ( of witnesses ) as  
 mentioned before,<sup>1</sup> or by the evidence of a writing, e. g. a record of  
 partition. It may also be ascertained by *yautakaiḥ*, separate, i. e.  
 partitioned houses and fields.

25 (3) The practice of agriculture or other business pursued apart from the rest, and the observance of the five<sup>2</sup> principal daily

1. Yājñ. II. 68-69. p. 846 *supra*.

2. पञ्चमहायज्ञादिधर्मोत्थानम्—see Manu III 70, 71.

अध्यापनं ब्रह्मयज्ञः पितृयज्ञस्तु तर्पणम् । होमो दैवो बलिर्भौतो नृयज्ञोऽतिथिपूजनम्

A unilateral declaration or communication is enough. *Girjabai vs Sadashiv* 18. Bom. L. R. 620. Thus when a notice containing the intention was despatched on the 4th August, but it reached the addressee on the 9th August, the declarant's death on the 5th August did not affect severance. *Nyapati Narayana Rao vs Mudhanapali Purushottam Rao* ( 1938 ) Mad. p. 315, or filing a suit. *Dattatraya vs Prabhakar* 39 Bom. L. R. 94.

performances and other religious duties performed separately from them, are pronounced by Nārada<sup>1</sup> to be tokens of a partition<sup>2</sup> :  
“Among unseparated brothers, the performance of religious duties is single. When a partition has been made, indeed the (performance of)  
“religious duties also becomes separate for each one of them.”

5

(4) Similarly, other signs of previous separation are specified by the same Author<sup>3</sup> : “Brothers who are divided may perform the acts of  
“giving evidence, of becoming a surety, bestowing and taking gifts;  
“but never those who are not separated.”

. Thus ends the Chapter on the Distribution of Heritage.

Here also ends the translation of the portion of the Mitākṣharā by Mr. Colebrooke.

( Contd from last page )

Separation among brothers raises no presumption of a separation between one of the brothers and his sons. *Mt. Menda Kuar vs Mirtunjai Baksh Singh*. 3 Luck 220.

An entry in the Record of rights showing the shares of each member is evidence of severance. *Anurago Kuer vs Darshan Raut* 40 Bom. L. R. 758 ( P. C. )

*Mesne profits* : one cannot recover past mesne profits. 38 Mad. 550.

1. Nārada Ch. XIII. 37.

2. Colebrooke reads one more verse from Nārada viz. No. 36 Ch. 13 i. e. the one immediately preceding No. 37. It mentions additional facts proving partition. It reads thus:

विभागधर्मसंदेहे दयादानां विनिर्णयः । ज्ञानिभिर्भागिलेख्यैश्च पृथक्कार्यप्रवर्तनात् ॥ ३६ ॥

Tr: “ If a question arise ( among co-heirs ) in regard to the fact of a partition, it must be ascertained by the evidence of kinsmen, by the record of the  
“distribution, or by separate transaction of affairs.” *Bhāgalekhyā* भागलेख्य is a document evidencing partition. This is one of the kinds of written evidence referred to in *Abhilekhita* अभिलेखित in Yājñ. II. 149 above.

Bālabhāṭṭa gives another reading viz. भोगलेख्येन *Bhogalekhyena* “ by occupancy and by writing ” or “ by a writing evidencing possession.”

3. Nārada Ch. XIII. 39.

## Vîramitrodaya

Thus having discussed distribution, the Author mentions the determining factors when there is a doubt about it

## Yājñavalkya, Verse 149

- 5 “A partition has not taken place between us”, when in this way a partition is denied, the determination of the separation *i. e.* prior partition should be ascertained *i. e.* determined by the Chief Judge or the like, by the evidence of kinsmen, born in the father's family, of cognate kindreds, *i. e.* relations other than these, by the evidence of witnesses  
10 of the qualifications stated before, and by other evidence as would be helpful in establishing the desired point, such as documents of partition of houses, lands, partition *i. e.* which had become the exclusive property like the *yautaka*.

- 15 By the use of the word *cha*, ‘and’, are included the signs of a partition stated by Nârada, *viz.*: “Those whose income and expenditure of “wealth is separate, and who mutually lend at interest to each other, “those also who exchange merchandise, these are separated, and no “doubt”; and also of the Ordeal (149).

- 20 Thus ends the Chapter on Dâvavibhâga in the commentary on Yājñavalkya.

## Sûlapâñi

## Yājñavalkya, Verse 149

- When a partition is denied, the partition should be established by the kindred by the (proof of) separated houses and lands. So Nârada :  
25 “Those whose receipts and expenditure are separate, and who mutually “lend at interest to each other, and who carry on business transactions “separately, these are certainly separated; there can be no doubt.” (149)

Here ends the Chapter on Partition.

## CHAPTER IX.

### On Boundary Disputes

The Author now describes the rules for determining boundaries &c.

#### Yājñavalkya, Verses 150 and 151

In a dispute about the boundary of a field, the neighbours, the elders and others, the herdsmen, the cultivators on the boundary and all persons moving in the forest (150); should determine the boundary marked by signs by means of observing the following marks, *viz.* mounds, char-coal, chaffs, trees, water-embankments, ant-hills, slopes, bones, heaps of stones, and similar other marks (151.)

**Mitākṣharâ:**—Appertaining to two villages **kṣhetrasya simno vivâde**, in a dispute about the boundary of a field, as also in a dispute regarding the boundaries of a field falling within one village, **sâmantâ**, the neighbours, and others **nayeyuh**, should determine, *i.e.* fix, the **sîmânam**, boundary, marked by signs **upalakṣhitâm sthalângârâdibhiḥ**, by means of observing the mounds, char-coals &c., *i.e.* the boundary marks made before.

A boundary is a line delimiting a field and the like. It is of four kinds. The boundary of a country, the boundary of a village, the boundary of a field, and the boundary of a house. Each of these has generally five characteristics according as may be possible. As has been mentioned by **Nârada**<sup>1</sup>: "A boundary is known to be of five "kinds *viz.* one having a flag-mark, one marked by the fish, one "known by a deposit, one which is undisputed, and one created by the "king's command". *Dhvaṇinî*, "one having a flag-mark", *i.e.* marked by trees &c. (standing on it), trees &c. having a resemblance to a

flag-staff, as they are openly visible. *Matsyîṇî*,

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"one marked by the fish", *i.e.* one with water in it. Because the word fish indicates (the

existence of) water which is its support. *Naidhânî*, "known by a deposit", *i.e.* one containing the fire of the husk deposited after digging, since it resembles a deposit on account of its being interred after digging. *Bhayavarjitâ*, "one which is undisputed", *i.e.* one which was created by the mutual agreement of the plaintiff and the defendant. *Râjâśâsananeetâ*, "one created by the king's command", *i.e.* in the absence of signs for recognition, created by the will of the king.<sup>2</sup>

1. Not found in the published edition of Nârada. 2. See verse 153 further on,

In reference to a boundary as described above, six varieties of disputes are likely to arise as says **Kātyāyana**<sup>1</sup> :  
Six-fold disputes.

“Excess or deficiency as to a part, existence, or  
“absolute non-existence (of the right itself), possession without previous  
5 “possession by any other, and a boundary, are the six causes (that lead)  
“to a dispute regarding land”. For example, in a claim by some one  
to the effect : “ My land here is more than five *nivartanas*<sup>2</sup> ”, an  
answer to the effect, “It is only five *nivartanas* and nothing more”  
it would be a dispute ‘regarding excess’. Where in an assertion by a  
10 party that his land was five *nivartanas*, the answer is, “it is not so, it is  
“indeed less than that”, it would be a dispute ‘regarding a deficiency.’  
In an assertion by a party that his share in the land measured five  
*nivartanas*, a reply that he had no share at all, would constitute a  
dispute ‘regarding the existence or absolute non-existence.’ Where  
15 in a suit, the plaintiff asserts “This is my land and is in my possession  
“without any one being in prior occupation”, and the defendant denies it,  
and says that his possession was indeed long and continuous, that would  
give rise to a dispute where ‘possession without previous possession’  
is the point to be determined. When there is a dispute whether *this* is  
20 the boundary limit or *that*, it is a dispute ‘regarding boundary’. In  
this way a dispute of this kind is likely to be of six varieties. Although  
the sixfold dispute be regarding land, still as the boundary also is deter-  
mined either under an express or implied text, ( the consideration of )  
that has been incorporated in the chapter on ‘Boundary disputes’.

25 Those who belong to the neighbourhood are *neighbours*, **Sāmantāḥ**;  
and those, belonging to different contiguous villages on the four sides;  
are residents on each (point) of the boundaries. For a text of  
**Kātyāyana** declares that “ A town is the neighbour of a town; a field  
“is said to be the neighbour of a field; a house has been indicated to be  
30 “that of a house on account of its being situated in the neighbourhood”.  
By the words ‘a town &c.’, are indicated persons residing therein *e. g.*  
in the expression ‘the town was routed.’ The use of ‘neighbours’ is  
also indicative, by implication, of those contiguous to them. **Kātyāyana**  
also has said : “Those who are closely contiguous are called neighbours;  
35 “so also are those who are contiguous to these; and those who are  
“contiguous to the contiguous resembling a lotus in their formation.”

1. Verse 732.

2. A measure of land = 20 rods.

**Sthavirâh**, the elders, i. e. old men. By using the word 'others' *Ādayah*, are included the *Maulas* and *Uddhrtas*. The definition of 'old men' and others has been given by the **Same Author** thus : " Those who have witnessed anything being brought about, are considered as old men, being endowed with the qualities of them, quite apart whether they are actually aged or no. 5

" Those who lived before as neighbours and afterwards migrated to another region, are called by the sages the, 'natives' or *Maulas* of the place, as they had their ( domicile of ) origin in that place.

" Those, moreover, who, since they bring out a fact of old, as being borne out by tradition, by any act of peaceable possession and by special episodes relating to it, are known as the *Uddhrtas* or the "antiquarians." 10

**Gopâh**, herdsmen, i. e. those who tend the kine. **Sīmâkr̥ṣhāṇâh**, cultivators on the boundary, i. e. tillers of the fields lying contiguous to the boundary. **Serve cha vanagocharâh**, and all persons moving in the forests, i. e. the foresters such as huntsmen &c. These, moreover, have been mentioned by **Manu**<sup>1</sup> viz. : " Hunters, fowlers, herdsmen, fisher- men, root-diggers, snake-catchers, gleaners and other foresters." 15

**Sthalam**, a mound, a raised portion of ground, **aṅgârah**, char-coal, the refuse of fire, **tushâh**, chaffs, the coating of corns, **drumâh**, trees, like the (Indian), fig<sup>2</sup> tree, **setuh**, a water-embankment, of a dam to a flow of water; **chaitya**, a heap of stone, i. e. an embankment of stone or any other material. By the use of the word *Ādya*, 'any others', are included bamboos, sand &c. 20 25

These,<sup>3</sup> moreover, are of two classes according as they are visible, or not visible. *Vide Manu*<sup>4</sup>: " Let him mark the boundaries (by) trees such as the Nyagrodhas<sup>5</sup>, *Āsvatthas*, *Kimśukas*, cotton-trees, *Sâlas*, "Palmyra palms and trees with milky juice (246). By clustering "shrubs and bamboos<sup>6</sup> of different kinds, *Samis*, creepers and raised 30

1. Ch. VIII. 260.

2. *Ficus Indica*.

3. i. e. the boundaries.

4. Ch. VIII 246-248.

5. Nyagrodha, *Ficus Indica*. *Āsvattha*—*Ficus Religiosa*. *Kimśuka*—*Butea Frondosa*. *Sâla*—*Shorea Robusta*. 'Trees with milky juice' i. e. *Arka*—*Calotropis Gigantea*; *Udumbara*, *Ficus Glomerata* &c. *Samī*—*Acacia Suma*.

6. *Bālabhattacha* notices also another reading viz. *Kupyaka-gulma*. *Nanda paṇḍita* reads *Kulyaka*.



"mounds, reeds and thickets of the kubjâka<sup>1</sup> so that the boundary  
( mark ) will not vanish ( 247 ). Tanks, drinking reservoirs, wells,  
"and fountains should be built on boundary junctions, as also temples,  
( 248 )." These are visible ( marks ).

- 5 " Having<sup>1</sup> seen that through men's ignorance of the boundaries  
"trespasses constantly occur in the world, let him ( *i. e.* the king ) cause  
"to be made other marks of boundaries which remain hidden ( 249 ).  
" Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung,  
" bricks, cinders, pebbles, and sand ( 250 ). And whatever other things  
10 " of a similar kind the earth does not corrode ( even ) after a long  
" time, these he should cause to be buried as invisible signs where  
" boundaries join ( 251 ). By these signs the king shall ascertain the  
" boundary ( of the lands ) of two disputing parties." These are  
( boundaries ) with their marks hidden.

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- 15 By means of these visible and invisible marks pointed out by the  
neighbours and others, the king should determine the boundary of  
the two disputing litigants.

#### Vīramitrodaya

- Now the Author states the method of the delimitation of the  
20 boundary

#### Yājñavalkya, Verses 150, 151.

- In a dispute regarding the boundary between two villages, the  
neighbours and those others stated before marked *i. e.* identified by  
means of mounds, char-coals &c. should determine *i. e.* fix, the boundary.  
25 Kātyāyana states the characteristics of neighbours thus: "A town is the  
"neighbour of a town, a field has been declared to be that of a field ; a  
"house has been pointed out to be that of a house on account of its being  
"situated in the neighbourhood." That village which by its encircling  
*i. e.*, surrounding, is situated on the four quarters is the neighbour of  
30 that village. The meaning is that in this manner also is of the land,  
house, etc. ( to be taken ). By the word *grāma*, 'town', are spoken of  
the people residing there ; *sthavirāḥ*, 'elders', *i. e.*, old men. By the word  
*ādi*, 'and others', are included the *maulas*, *uddhṛtas* and others.

The characteristics of *vṛddhas* &c. have been mentioned by Kātyāyana thus : "Those by whom was seen the transaction ; men possessing these "qualifications, whether they are old or not old are declared as *vṛddhas*. "Those, who were formerly residents at the place, and afterwards had "gone to another region, these as they originally belonged to that place, "are called *maulas* by the sages. Those, who, marked with the charac- "teristics of knowing (the boundary) from hearsay, possession, transaction, "tradition, ( help to ) bring out the decision, are therefore known as "*uddhṛtāḥ*."

*Gopāḥ*, 'cowherds', those who tend the kine. *Simā-Kṛṣhāpāḥ*, 'cultivators on the boundary' i.e., cultivators of the field on the boundary; *sarve vanachārīṇo*, 'all persons moving in the forest', i. e., the hunters, fowlers, the forest-guards and the like. By the use of the word *cha*, 'also', twice are included fishermen, gleaners and the like, as also root-diggers, snake-catchers and the rest. So also **Manu** <sup>1</sup>: "Hunters, fowlers, herds- "men, fishermen, root-diggers, snake-catchers, gleaners and other "foresters".

*Sthūlāṅgāro*, 'the hard charcoal' i. e., the remnant of the wood from the fire. *Sthūlāṅgāra* is the reading in some places. In that case it should be explained as *sthalam*, 'a mound' meaning a raised portion of the ground. *Tuṣhāḥ*, 'chaffs', i.e., the coating of corn; *drumāḥ*, 'trees', such as the *Plakṣha* or the like trees; *setuḥ*, 'embankment'; *valmikāḥ*, 'the ant-hill', an elevated place well-known in the Central Provinces, as *Divā ubhindu* दिवा उभिन्दु; *nimnam*, 'slopes', such as pits, etc.; *asthi*, 'bones', are well-known; *chaityah*, a monumental village tree. By the word *ādya*, are included pebbles, etc. That has been stated by **Manu** <sup>2</sup>: "Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung, bricks, "cinders, pebbles and sand (250). And whatever other things of a "similar kind the earth does not corrode (even) after a long time, these "he should cause to be buried as invisible signs where boundaries join"

### Śûlpâṇi

#### Yājñavalkya, Verses 150, 151

In a dispute about the boundary of a field, the *Sāmantās*, the local inhabitants, *vṛddhāḥ* 'the old'. By the use of the word *ādi*, 'and like others', the hunters etc., are meant. By visible signs such as immovables etc hidden marks, such as charcoal etc. the marked boundary they should determine. (150, 151)

When, however, the marks do not exist, or being in existence are ambiguous by reason of the non-determination of any mark thereof, the Author lays down, a rule for deciding the dispute

**Yājñavalkya, Verse 152**

- 5 Men of the neighbouring villages, or of the same village, being in number either four, eight, or even ten, having put on garlands of red flowers, and red dresses, and taking some of the earth, shall determine the boundary.

- Mitākṣharâ—Sāmāntāḥ, men of the neighbouring villages, i. e. as has been described before<sup>1</sup>. Samagrāmāśchatwāroṣṭau daśāpi wā, or of the same  
10 village being in number four, eight, or even ten, thus being of an even number and belonging to the neighbouring villages;<sup>2</sup> putting on chaplets of red flowers, and clad in red garments, and with lumps of earth placed on their foreheads, shall determine—i. e. point out—the boundary.

- The alternative suggested in the expression *Sāmāntā wā* “men of  
15 “the neighbouring villages or”, has a reference to the witnesses mentioned in other Smṛtis. For *Manu*<sup>3</sup> has said: “The settlement of a  
“dispute regarding boundaries shall depend on witnesses.” Here therefore the decision by (means of) the witnesses is the chief course. Failing that, by the *Sāmāntas*. So it has been laid down by *Manu*<sup>4</sup>: “In  
20 “the absence of witnesses, men from the four neighbouring villages,  
“who are pure, shall make a decision concerning the boundary, in the  
“presence of the king”. Failing these, the neighbours of these shall decide, as says *Kātyāyana*: “When the men from the neighbouring  
“villages are (suspected to be) corrupt on account of personal interests,  
25 “undoubtedly the decision must be obtained from men of the other  
“neighbouring villages, regard being had to the importance of the  
“interests at stake. When even such neighbours of the neighbours are  
“found to be faulty, it has been laid down that the neighbours of these  
“should be selected; but the king, knowing well the law, should never  
30 “engage men who are vitiated.”

1. i. e. on page 1149.

2. *Samagrāmāḥ*—Both Mandlik and Borrodaile translate *Samagrāmāḥ* as “of the village in which the disputed land is situate.” The expression simply means “of the same village”, and may be interpreted as has been done by the two eminent writers named above, or may be taken as adjectival of and qualifying the *Sāmāntas*, as has been done by *Bālabhāṭṭa* (see p. 275 l. 18). *Aparārka* notes a different reading altogether viz. “सामन्ता वा समा ग्रामाः &c.”

3. Ch. VIII. 253.

4. Ch. VIII. 258.

In the absence of the Sāmantas and others, men who are natives of the place (*Maulas*) should be selected. Since Kātyāyana has laid down the order : "In the absence of these, the Sāmantas, the *Maulas*, "the Elders, the *Uddhṛtas* and like others should be selected even in "the sixfold disputes regarding immovables". These Sāmantas and others are selected according to the preponderance of their number or merit, *vide* the text<sup>1</sup>: "The first (means to be resorted to for a decision) "are the Sāmantas, should they be free from any blemish; the next,<sup>2</sup> "if possessed of good qualities should be double; and those next to "them, if similarly qualified, should be treble (in number)".

5

10

Moreover, these witnesses (referred to above), as also the neighbours and others should determine the boundary, after they are duly sworn according to the form prescribed for each; *vide* the text of *Manu*<sup>3</sup>: "Let them, putting earth on their heads, wearing chaplets of "flowers, and putting on red dresses, being sworn each by (the "rewards for) his meritorious deeds, settle (the boundary) in accordance with the truth". The plural in (the expression) 'they should settle' is used with a view to obviate the engagement of two, and not of one. Since Nārada<sup>4</sup> has permitted one to settle a boundary thus: "Should a single man undertake to fix the boundary, he must do so "after having kept a fast<sup>5</sup>, wearing a garland of red flowers and a red "robe, and having placed the earth on his head". As for the text<sup>6</sup>: "One man should not determine the boundary, though he be a reliable "person; regard being had to its importance, this business should be "entrusted to a plurality of persons", and the prohibition which it contains against one, that prohibition extends to one other than that who is approved of both (the suitors), and who is conversant with the law. Thus there is no conflict.

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Even when the marks such as a mound &c. are not available, Nārada<sup>7</sup> has mentioned a special mode of finding out the boundary by

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1. of Kātyāyana-Bālabhāṭṭa p. 276. l. 2. 2. i. e. the *Maulas*.

3. Ch. VIII. 256.

4. Ch. XI. 10.

5. Dr. Jolly gives a reading सोपवासः समाहितः "having kept a fast and in a collected frame of mind."

6. of Nārada Ch. XI. 9.

7. Ch. XI. 6.

the witnesses, the neighbours &c. thus : “When a piece of ground has  
 “been carried off by a stream and<sup>1</sup> thus the boundary marks have been  
 “uprooted or destroyed, (they shall fix the boundary) according to the  
 “inference to be drawn from (an inspection of) the spot, and according  
 5 “to the measurements, and according to the traces of possession” i. e.  
 they should determine (the boundary), by noting in those boundary  
 regions where a down-flowing river has carried off or washed away  
 the marks, and which have thus either been uprooted from their places,  
 or been destroyed (altogether). There, (the expression) ‘according to  
 10 the inference to be drawn from the spot’ means according to the  
 inference as to the old spot, the marks whereof have either been up-  
 rooted or annihilated. ‘According to measurements,’ e.g. ‘The field lies  
 on the west of this village measuring 1000 rods commencing from the  
 village’, and the like; or according to the evidence of long and immemo-  
 15 rial possession within the knowledge of and adversely to the opponent.  
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A special rule has, moreover, been laid down by **Br̥haspati**<sup>2</sup> in this  
 connection : “Those persons will be proper witnesses in disputes of  
 “this nature who know the origin of the title, the evidence regarding  
 “it, the duration of possession, the name, and also the character of the  
 20 “(particular) piece of ground”.

These witnesses, *Sāmantas* and others, moreover, being sworn  
 according to the oaths of each, should be questioned by the king in the  
 presence of *Kulas*<sup>3</sup> &c. As says **Manu**<sup>4</sup>: “The witnesses (giving evidence)  
 “regarding a boundary, shall be examined concerning the land-marks  
 25 “in the presence of the *Kulas* of the village, and also of the two  
 “litigants”. The witnesses &c. thus examined should give a unanimous  
 decision of all together regarding the boundary.

The boundary thus determined by these, together with all the  
 marks pointed out by them, with the names of witnesses &c. specified,  
 30 should be noted on a document that it may not be forgotten. It has

1. Dr. Jolly interprets अपहृत, नष्ट and उत्सृष्ट as separate results following from  
 the actions of separate agents and translates thus : “or abandoned (by the owner),  
 or the boundary marks have been destroyed &c—” : 2. Ch. XIX. 14.

3. See Yājñavalkya II. 30 & the Mitākṣharâ thereon pp. 746-747 &c., above.

4. Ch. VIII. 254.

also been said by **Manu**<sup>1</sup>: “As they, being examined, declare the marks ‘of the boundaries ( to be ), even so the king shall justly cause them all ‘to be fixed between each village.”

If within an interval of three fortnights from the day of the making of (a decision regarding) the boundary, no calamity either from the king or God fall on these, *i. e.* the witnesses, *Sāmantas* and others, then a proof of that would establish the decision as to the boundary. This interval about the calamity from God or king has been laid down by **Kātyāyana**: “In decisions regarding a boundary, in the case of the ‘ordeals by *Kośa*, and of the touching of the ( holy ) feet, the interval ‘for ( the visitation of ) a calamity from God or king is respectively “three fortnights, a fortnight, and seven days.”

#### VĪRAMITRODAYA

When, however, the aforestated marks do not exist, or are ambiguous by reason of their being or not being (regarded as) marks, then the Author states the means for a decision

#### Yājñavalkya, Verse 152

*Sāmantāḥ*, ‘men of the neighbouring villages’, as have been described before; *samagrāmāḥ*, ‘men of the same village’, *i. e.*, of the immediately adjoining villages, *chatwāroṣṭau daśa wā*, ‘four, eight, or ten’, who themselves are sure of the boundary, with red flowers and clothes on, and with clods of earth placed on their heads, *simām nayeyuḥ*, ‘should determine the boundary’, *i. e.*, should definitely fix. The adverbs *api*, *wā*, ‘also’, ‘or’, are indicative of option. In the expression ‘or the *sāmantas*’, the word ‘or’ intends witnesses, as says **Manu**<sup>3</sup>: “In the determination of a boundary, the testimony of witnesses (may be availed of)”. Similarly<sup>4</sup>: “In the absence of witnesses, “four men from the four neighbouring villages, shall make a decision “concerning a boundary in the presence of the King.” **Kātyāyana** also: ( same as p. 1154 ll. 23–30 above ). Similarly, in regard to witnesses, the same author says: “In the absence of the *sāmantas*, the *maulas*, “*uddhṛtas* and like others.” **Manu**<sup>5</sup>: “Placing earth on their heads:

1. Ch. VIII. 261.

2. प्राप्तः—*is a better reading than नाम्नः* which would read when translated “and fixed by name”.

3. Ch. VIII. 254.

4. Ch. VIII. 259.

5. Ch. VIII. 257.

“wearing chappels of flowers, and putting on red dresses, being each  
“sworn by his meritorious deeds, let them settle (the boundary) in  
“accordance with the truth.”

- After the determination in this manner, if any calamity owing to  
3 the act of the King or of God does not occur to the *sāmantas* and the rest,  
then the boundary determined by them should be (finally) fixed by the  
King; vide this text of *Kâtyâyana*: “In the matter of the settlement of  
“a boundary, in the ordeals by the *kośa*, as also by the touching of the  
“feet, (the occurrence of) a calamity from the King or God within three  
10 “fortnights, one fortnight, or seven days (respectively) is regarded” (152).

### Śûlpâṇi

#### Yâjñavalkya, Verse 152

- If there be doubt as to the marks themselves, then the inhabitants of  
the neighbouring villages, four, eight, or ten, even in number with red  
15 flowers on heads and clad in red robes, affirmed in the oaths stated  
before, placing clods of earth on their head, should determine the  
boundary. (152).

- When, however, of those who gave evidence as witnesses, any  
disease &c. is noticed within the interval of three fortnights, or when  
20 their evidence conflicts with the testimony of witnesses other than  
those cited by the defendant, and who are entitled to more weight by  
their qualifications and number, then those (former) deserve to be  
punished for their false evidence. The Author states the rule as to that

#### Yâjñavalkya, Verse 153 (1)

- 25 In case of a falsehood, they should severally be punished by the king  
under the middling amercement.

- Mitâkṣharâ*:—*Anṛte*, in case of a falsehood, i. e. for telling a lie which  
was the basis of the decision, all the *Sāmantas* shall each be punished  
*madhyamasâhasena*, with the middling amercement,<sup>1</sup> i. e. with a fine of five  
30 hundred and twenty four *pañas*.<sup>2</sup> That this penal provision refers to

1. There are three grades of *Sâhasas*, प्रथम, मध्यम and उत्तम; see *Nârada*.

2. A *ṇa* is a coin either of copper or of gold. The ordinary *Paṇa* is equal  
in value to 80 cowries i. e. about 3 or 4 pies.



the *Sāmantas* is inferable from the fact that a separate provision of punishment has been made in other Smṛtis for the witnesses, *Maulas* &c. For says **Manu**<sup>1</sup>: “If they determine (the boundary) in the manner “stated, they are guiltless (being) veracious witnesses; but if they “determine it unjustly, they shall be compelled to pay a fine of two 5  
“hundred (pañas)”. *Nârada*<sup>2</sup> also having laid down the middling amercement for the *Sāmantas* in: “Should, however, the neighbours speak “falsely when called upon to decide a question of this sort, they shall all “be punished severally by the king, each having to pay the fine of the “middling amercement,” has prescribed a punishment of the first degree 10  
for the neighbours of these: “Should the rest of those engaged in a “dispute regarding land tell a lie, these are (considered as) sinners, “and shall be punished with a fine of the first amercement.” The same punishment has also been laid<sup>3</sup> down for the *Maulas*, Elders &c: “The *Maulas*, the Elders and the rest shall also each be severally 15  
“punished with a penalty; they shall have to pay the fine of the first “degree, if they make false statements”. By the use of the expression *Adi*, ‘and the rest’, are included, the cowherds, bird-catchers, hunters, and other inhabitants of the forest. Although, by reason of their being engaged in a sinful avocation, the use of the bird-catchers &c. is 20  
made only in pointing out the marks, and not in the actual determination of the boundary itself, still the imposition of a penalty is proper, as it is likely that a false statement may be made even in the pointing out of the mark or sign.

The rule as to punishment laid down in: “In the case of a falsehood, 25  
“they should be severally punished,” has a reference to (statements made through) ignorance, since *Kātyâyana* has laid down a separate punishment for those who do so by design thus: “If, of those many “assembled together, all do not declare a decision either through fear “or out of avarice, they shall be punished with the highest amercement.” 30  
Similarly, the same punishment has been prescribed by the **Same Author** in case where there is a discrepancy among the witnesses: “If there be a discrepancy among those examined, they shall be “punished with the highest amercement.”

1. Ch. VIII. 257.

2. Ch. XI. 7.

3. By *Nârada* Ch. XI. 8.

- Having thus punished the witnesses &c. for speaking falsehood through ignorance or other cause, a fresh proceeding should be commenced for determining the boundary: For the **same Sage** having observed: "After having punished in the case of a statement with-
- 5 "out knowledge, the (question as to the) boundary should again be investigated", has laid down the procedure for determining the boundary thus: "Having excluded such of the neighbours as are (found to be) "faulty, he should select others, and joining them together with the "Maulas &c., the king should have the boundary determined; this is
- 10 "(the rule) known to those who are conversant with law."

### Vīramitrodaya

When, however, within the interval of three fortnights, a disease etc. is seen, then a punishment should be inflicted on them, so says the Author

### 15 Yājñavalkya, Verse 153 (1)

*Anṛte*, 'in the case of a falsehood' *i. e.*, if they (are found to have) told a lie, for that reason, *te*, 'these', *i. e.*, the *sāmantas* and the rest should each be punished with twenty-five *paṇas*, the penalty for the middling amercement.

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- 20 When, however, the *Sāmantas* and others conversant (with the locality) or the marks do not exist, how should a decision be made? So the Author says

### Yājñavalkya, Verses 153 (2)

- 25 In the absence of persons knowing, or of marks, the king should determine the boundary.

- Mitākṣharā** :—In the absence of persons knowing, such as the *Sāmantas* and others, and also of marks, such as trees &c., *rājâ sîmnah pravartitâ*, the king himself shall determine the boundary, *i. e.* shall cause it to be determined. The causal is here understood. The land, the
- 30 subject-matter of dispute, lying between two villages, should be divided equally, and should be assigned to the two litigants, after specifying thus: "this is the land of this man", "this land is to go to

"that man", and boundary marks should be made at the spot intervening between the two. When the land appears to be of immense use to one of the two litigants, then the whole land of the village should be given to him alone as says Manu:<sup>1</sup> "If the boundary cannot be ascertained (by any evidence), the king, knowing the law, should himself assign the land to such (of the two) to whom it would be most serviceable. This is the law"

5

Vîramitrodaya

Yājñavalkya, Verse 153 (2)

If the persons who know, or the signs, do not exist, then Rājâ, the King, *pravartitâ* 'should determine' i. e. cause to be determined the boundary in pursuance of his own wish. Here the causal is implied. As says Nārada<sup>2</sup>: "When, however, there do not exist persons who know, nor is there any mark in the boundary, then the King should himself determine the boundary of the two, after a personal inspection". In the Mitākṣharâ<sup>3</sup> this has been explained as "the boundary should be determined by the King by an equal division of the land under dispute."

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Brhaspati:<sup>4</sup> "When land has been taken away from one and added to another village, either by (the inundations of) a big river, or by the King, how should the investigation be in such a case? (16). The land abandoned by a river or granted by the King belongs to him to whom it (so) came. Otherwise men will not receive any benefit from the King or through fate (17). Loss and gain, and also the life of men, depend upon the fate and the King, therefore in all transactions what has been brought about by them should not be disturbed (18). Where between two villages a river has been fixed as the boundary; that should not be removed on account of diminution or accretion; any one removing it will be liable to punishment (19). The falling off of the banks on one side produces an increase in the land elsewhere; that increase must not be taken away from him (20)." The meaning is that the land which was produced by the encroachment upon the bank, belongs to the owner of the other side.

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"When land is carried away by the swift course of a river overflowing a cultivated piece of land, the previous owner shall recover it" (21). The meaning is that the land which has been carried by the overflowing of a river by crossing over another land, remains as of the ownership of the previous owner (153).

35

## Śûlapâṇi

## Yājñavalkya, Verse 153

5 If a false declaration be made, they should be punished by the king, each separately, with the middling amercement. In the absence of marks for identification, the king should himself make the boundary. (153)

With a view to demonstrate that this text is founded on justice, even though there is no room for supposing that it is not so, the Author mentions an extension<sup>1</sup> of the rule (stated in the last two verses)

## Yājñavalkya, Verse 154

10 The same rule should be understood (to apply) in (the case of) a garden, a ware-house, a village, a watering-place, a pleasure-garden, a house, a rain-watercourse and the like.

Mitâkṣharâ :—Ârâmaḥ, a garden, a piece of ground intended for growing and gathering flowers and fruits. Âyatanam, a ware-house, 15 i. e. a house, or a plot of ground set apart for storing husk or straw. Grâmaḥ, a village, is well-known. The use of the word village, moreover, is indicative of a town, by implication. Nipânam, a watering place, i. e. a drinking place, such as a well, a pond and the like. Udyânam, a 20 pleasure-garden, i. e. a pleasure-bower. Veśma, a house, i. e. a dwelling place. In (the case of) these i. e. the garden &c., this very vidhiḥ, rule, i. e. as characterised by the (rule about) sâmantas, witnesses &c., should be known (to apply). Similarly (should be the rule) in the case of water-courses arising from excessive rain-fall i. e. in disputes 25 of a kind where it is alleged that "the course of water flows by the middle (line) of these two houses or those two". By the use of the term Âdi, 'and the like', the same old rule should be known to apply in the case of mansions also. For Kâtyâyana also says : "And also in 30 "the case of a field, a well, a tank, and even a meadow, or a garden; "a house, a mansion, a resting place, the abode of a king and the "temple of god."

1. An अतिदेश is an extension or an extended application of a rule to things not directly covered by the rule itself. For an explanation of this passage see Bâlabhattachâ. pp. 277 and 278. and note 5 on p. 982.

Vīramitrodaya

With an eye to brevity in the treatise, the Author extends the afore-stated law to another subject

Yājñavalkya, Verse 154

*Ārāmaḥ*, 'a garden', i.e. a pleasure garden; *āyatanam*, 'a warehouse', 5  
a piece of land set apart as for stocking husk, straw, etc.; *grāmaḥ*, 'a village', is also indicative of a town by implication; *nīpānam*, 'a watering place, such as a well, a reservoir, etc.'; *udyānam*, 'a pleasure bower', i.e. 10  
a piece of land set apart for sport; *veśma*, 'a house', i.e. a dwelling place; *varṣāmbu pravāha*, 'a rain-water-course', i.e. a channel of water produced by the monsoon showers; for these, *eṣa eva*, 'this same', i.e. as stated in regard to the boundary, is *vidhiḥ*, 'rule', i.e. the method of determination. 15  
By the word *ādi*, 'and others', are included a field, door, etc.

**Brhaspati**<sup>1</sup> : "From since the time of its foundation, a house, a pool, 15  
"a shop or the like, whatever has been occupied by a man in whichever  
"manner and upto whatever period, that must not be disturbed from  
"him" (24). "Windows, water-courses, as also a projecting<sup>2</sup> balcony, a  
"channel for the outward flow of water from a quadrangle, constructed  
"before, must not be removed" (25). *Pranālī*, 'a water-course'; *nirvyūha-*  
*vedikā*, 'a projecting balcony', a balcony made of elephant tusks; 20  
*chatuṣśālam*, 'a quadrangle', a house with four doors; *syandanikā*<sup>3</sup>,  
'channel for water', i.e. a portion of the floor, known as *osari* ओसरी.  
**Kātyāyana**<sup>4</sup>: "One should not let rain-water<sup>5</sup> drop, nor construct a  
"gutter in another's house." **Brhaspati**<sup>6</sup>: "A privy, a fire-place, a pit, a  
"receptacle for leavings of food and other (rubbish) must never be made 25  
"very close to the house of another person." **Similarly**<sup>7</sup>: "A passage  
"through which men and animals go to and fro unprevented is called  
"*saṁsārana*, and must never be obstructed by any one." **Kātyāyana**<sup>8</sup>:  
"One should construct a ring<sup>9</sup> for discharging ordure, urine and filthy  
"water, a fire-place and a pit after leaving a space of a couple of cubits 30  
"from the wall of another." *Chakram*, 'ring', for oil etc. **Similarly**<sup>10</sup>: "Of  
"trees springing up in the midst of the boundaries of two fields, the  
"fruits and the flowers produced therefrom should be made over to the  
"owners of the fields." i.e. to the owners of the two fields. Of the trees  
"which have sprung up in one man's field<sup>11</sup> where the branches become 35  
"embedded in another's field, that one should be regarded as the owner  
"of these in whose field they have become embedded," 'these' i.e. the  
branches. (154).

1. Ch. XIX. 24-25.

2. निर्व्यूहवेदिका Dr. Jolly translates "a peg projecting from a wall (used to hang them on)."

3. चतुःशाले स्यन्दनिकाः प्राङ्निविष्टा न चालयेत्—Dr. Jolly Tr. "a square of four buildings, and a channel for the exit of water..... 'must not be blocked.'"

4. Verse 753.

5. वृष्टिपानं—another reading is दृष्टिपानं—a window commanding a view.

6. Ch. XIX. 26.

7. Brhaspati Ch. XIX. 27.

8. Verse 754. 9. चक्रं—another reading is वृक्ष—a mound. 10. Verse 760-761.

## Śūlapāṇi

## Yājñavalkya, Verse 154

As to these i. e. the gardens etc. this same rule i. e. as characterised  
by the *Sāmantas*, witnesses etc. should be understood. By the word *ādi* are  
5 included fields etc. (154)

Having stated (the rule regarding) the decision of a boundary,  
the Author states, in that connection, the punishment for destroying  
the boundary marks and the like (acts)

## Yājñavalkya, Verse 155

10 For breaking up the boundary, for encroaching beyond the boundary,  
likewise, and for usurping the lands, the punishments are the lowest<sup>1</sup>, the  
highest, and the middlemost (respectively).

**Mitākṣharā:**—The common (plot of) land separating many fields, is  
a *maryādā*, boundary; for breaking that up with force, *śimātikramaṇe*, for  
15 *encroaching beyond the boundary*, i. e. for encroaching  
Penalties for break- beyond the boundary and ploughing, and also  
ing a boundary &c. for *usurping a land* by a show of fear &c., the  
*punishments*, respectively, of the lowest, the highest and the middlemost  
*Sāhasas* should be understood. The use of the word "land" (*kṣhetra*)  
20 here, is intended to include by implication, a house, a garden &c.

When, however, he usurps land &c., under a mistaken notion of (the  
same) being his, then a fine of two hundred (*paṇas*) should be understood.  
As says **Manu**:<sup>2</sup> "He who by intimidation usurps a house, a tank, a  
" garden or a field, shall be fined five hundred (*paṇas*); (if he does so)  
25 " through ignorance, (the fine shall be) two hundred (*paṇas*)." Having  
regard to the magnitude of the land or the property usurped, even the  
highest amercement may sometimes be prescribed. And it is for this  
that it has been said<sup>3</sup>: "Corporal punishment, confiscation of the entire  
" property, banishment from the town, and branding, as well as ampu-  
30 " tation of that limb (with which the crime was committed), is declared  
" to be the punishment for a *Sāhasa* of the highest degree."

1. See Nārada Ch. XIV. for a detailed description of *Sāhasas* or offences.

2. Ch. VIII. 264.

3. By Nārada XIV. 8. The edition of Nārada by Dr. Jolly reads one more  
line before the two quoted by Viṣṇāśvara. It runs thus:

उन्मेष साहसे दण्डः सहस्रावर दण्डये.

Tr. "For *sāhasa* of the highest degree, a fine of not less than a thousand  
(*paṇas*) is ordained."

Vîramitrodaya

On the occasion (of discussing) the boundaries, while mentioning the penalty for a transgression thereof, the Author states the same penalty in another connection also with a view to brevity of the treatise

Yājñavalkya, Verse 155

The common plot of land disconnecting the fields, etc. is *maryādâ*, 'the boundary.' For a forcible breaking of that and for transgressing the boundary and beyond that by tilling, etc. usurping the land of another by a show of fear, etc., the punishments of the lowest, highest, and the middlemost ameracements should respectively be administered. 5  
By the use of the word *tathâ*, 'likewise', immediately connected with the word 'land' are included the houses, gardens, etc. By the word *tu* 'however', is excluded the breaking up of a visible mark (155). 10

Śûlapâṇi

Yājñavalkya, Verse 155

For the breaking up of a boundary i. e. for transgressing a boundary, for taking away land, respectively the punishments are the middling and the highest ameracements (155). 15

Moreover, when after obtaining the permission of the owner of the field either by request or by payment of money, a man wishes to erect a dam for water, or sink a well, and if the owner of the field obstructs him, the owner himself is punishable. So the Author says 20

Yājñavalkya, Verse 156

An embankment, however, producing benefit should not be prohibited, where the injury is slight; (as also) a well which occupies but little space, but has abundance of water, which deprives another of his land. 25

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Mitākṣharâ :—Setuḥ, an *embankment*, i. e. the construction of a dam to a waterflow should not be stopped by the owner of the field, even though it *deprives*, i. e. destroys another's land; provided that it causes little injury and is productive of much benefit (to many). A well, moreover, as it occupies a small portion of land, causes little injury, and is beneficial on account of the abundance of water (in it), (so it) should never be stopped. 30  
The use of the word well, moreover, is indicative by implication, of a small well, a water-pond and the like others. From this it necessarily follows that when, however, it occupies the whole field and thus causes much injury, or being in a field in the vicinity of a 35



river or similar other water-place, is productive of very little benefit, it may be stopped. The two-fold character of an embankment has been mentioned by Nârada<sup>1</sup>: "There are two sorts of dykes (or water-courses),  
5 " one called *kheyah* ( *i.e.* one which may be dug into the ground ), and  
" another called *bandhyah* ( *i.e.* one which may be built up ). It is  
" called a *kheya*<sup>2</sup> when it lets ( out ) water to flow ; and it is called  
" *bandhya* when it stops water from flowing ”.

When, however, any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he  
10 should do so only after asking the permission of the former owner or his descendant, or of the king. As says Nârada<sup>3</sup>: "If a man were to put in  
" repair a dyke erected long ago but decayed, without asking the permis-  
" sion of the owner, he shall not have the (use and) profits of it ( 20 ).  
" When, however the owner is dead, and also all his human progeny,  
15 " he may ask the ( permission of the ) king and may set the dyke in  
" order (21)."

#### Vîramitrodaya

The Author mentions an exception to the fine stated for usurping a field

#### 20 Yājñavalkya, Verse 156

If to the owner of a field the injury be slight, if such an embankment, *i.e.*, dam is productive of great benefit to others, then the constructor of the embankment should not be prohibited *i.e.* stopped, by the owner of the field. The clause " which deprives another of his land"  
25 is connected to both. In a small field a well with abundant water should not be prohibited. By the use of the word *tu*, 'however', is excluded an embankment which would cause injury to many on account of its injuring the whole field (156).

#### Sûlapâni

#### 30 Yājñavalkya, Verse 156

If in another's field, an embankment which is being constructed by another be useful for many, and cause slight injury to the owner of the field, then such a one should not be prohibited, similarly a well  
( also (156) ).

1. Ch. XI. 18.

2. See Nârada Ch. XI. 19. Where the necessity of both these kinds is explained. viz: too much water destroys a crop and therefore it is to be let out ( *kheya* ); so also too little causes the crop to wither, and so also water has to be stored ( *bandhya* ). See Bâlabhâṭṭi p. 278.

3. Ch. XI. 20-21.

The rule as to the owner of the soil has been laid down (in the last verse). Now the Author mentions a rule regarding one who constructs a dyke

**Yājñavalkya, Verse 157**

If a man construct a dyke in a field without even informing the owner (of the field), the right to the produce is that of the owner, and in his absence, that of the king. 5

**Mitākṣharā** :—Without asking the permission of the owner of the field, or in his absence, of the king, he who **parakṣhetre setum pravartayati**, constructs a dyke in another's field, (that man<sup>1</sup>) will not be entitled to enjoy the produce. But in the produce reared therein, the right of enjoyment is that of the owner of the field, or in his absence, that of the king. Therefore the purport is, that the permission of the owner must be obtained either by request or by payment of consideration, and in his absence, of the king, and then a dyke should be set up. 10 15

**Vīramitrodaya**

One desiring to construct an embankment or a well in another's land should obtain the permission of the owner of the field by a request or by money-payment, or when that is not possible, should obtain the permission of the king, and then should he construct it. Intending this, the Author proceeds 20

**Yājñavalkya, Verse 157**

As regards the crop produced from it, when there is abundance of harvest, the (right of) enjoyment will be of the owner of the land, and not of the one who erects; when, however, the owner does not exist, then the (right of) enjoyment of the produce goes to the king. The word *eva*, 'even,' goes with the word 'owner,' thereby the constructor of the embankment is excluded (157). 25

**ŚŪlapāṇi**

**Yājñavalkya, Verse 157**

Without informing the owner of the field, if any one constructs an embankment, (then) after the embankment is completed, the owner of the field has the right to the enjoyment of the embankment. In his absence (the right is) of the king (157). 30

1. i. e. he who erects.

It has been said that the owner of a field should not obstruct the construction of a dyke. Now, the Author mentions another rule which has a close bearing in the same context

**Yājñavalkya, Verse 158**

5 He who does not cultivate himself, or through another, a field, even when it was broken by the ploughshare, should be made to pay the produce obtainable from the land, and the field should be got cultivated by another.

Mitākṣharâ:—He, however, who having undertaken in the presence of the owner of the field "I shall cultivate this field", afterwards gives  
10 it up, nor gets it cultivated by another, then, even when that field *phālāhatam*, was broken by the ploughshare, i.e. was dug up a little by the plough, and therefore was not properly prepared for the production of a good crop, still of the land so dug up, the produce i.e. such as was likely to be produced from it as determined by the neighbours &c.  
15 should be made to be paid by that cultivator; and the field also should be taken away from the former cultivator and should be got cultivated by another.

Here ends the chapter on **Boundary Disputes.**

**Vîrmitrodaya**

20 On the occasion of the (discussion about) the field, the Author says

**Yājñavalkya, Verse 158**

'I will till this land' thus having undertaken with the owner of the land, one who afterwards does not cultivate himself, nor cause it to be cultivated by another when it was furrowed with the plough, such  
25 a one should be compelled to pay as much as may be determined by the *Sāmantas* or others as the likely yield of the land. And the land also should be taken away from him and should be got cultivated by another (158).

30 Thus ends in the Commentary called **Vîramitrodaya** on the **Yājñavalkya Smṛti** on the Chapter **Boundary Disputes.**

**Śûlapâṇi**

**Yājñavalkya, Verse 158**

In some places the reading is *halāhatam*, 'broken by the plough.'  
35 A field even though broken by the ploughshare, after accepting it, if one does not perform the sowing operation nor does he either cause it (to be performed), such a one should be made to pay, even as from the uncultivated field, the quantity as may have been produced if cultivated, and it should be got cultivated by another (158).

Thus ends the Chapter on **Boundary Disputes.**

## CHAPTER X

### Of disputes between the Owners of cattle and their Herdsmen.<sup>1</sup>

The several titles of *Vyavahâra* are not related to each other as cause, or the thing containing the cause, and therefore, no particular order of enumeration was intended in the text<sup>2</sup>, "Of these the first is "payment and recovery of debts &c." Therefore by inverting the order (of enumeration) the Author now states the rules regarding disputes between the owners of cattle and their herdsmen

#### *Yājñavalkya*, Verse 159

A female buffalo doing damage to the crop shall be fined eight *mâṣhas*; a cow, half of that, and a goat or a sheep, half of that.

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**Mitākṣharâ:**—A female buffalo causing damage to a stranger's crop shall be fined eight *mâṣhas*; a cow, half of that, *i.e.* four *mâṣhas*. Goats, as also sheep, shall be fined two *mâṣhas*. Since the female buffalo and the rest are incapable of owning wealth, the person who owns these is intended. A *mâṣha*, moreover, is here intended to signify the twentieth part of a copper *pana*. For, *Nârada*<sup>3</sup> has stated: "A *mâṣha* "is considered as the twentieth part of a *pana*."

This rule, moreover, applies where the trespass has been without the knowledge (of the owner). When, however, the trespass is by design, the rule laid down in **another Smṛti** should be observed *viz.*: "Two quarters of a *pana* for a cow, and double that for a female buffalo; similarly, for a goat, a sheep and calves, a quarter has been laid down as the fine." What, however, has been laid down by *Nârada*<sup>4</sup>: "For (a trespass by) a cow, he should inflict a fine of one *mâṣha*, for (a mischief by) a female buffalo, two *mâṣhas*; and in the case of a goat, a sheep and calves, the fine shall amount to half a *mâṣha*," has a reference to crop which had ripened into sprouts, and which has been eaten up leaving only the roots.

1. See Digest Book III. Ch. IV. pp. 83-106.

2. *Manu* Ch. VIII. 47. referred to above see p. 646: ll. 15-25; see also *Yāñ.* I. 362-363 and commentaries.

3. App. 58.

4. Ch. XI. 31.

## Viramitrodaya

## Yājñavalkya, Verse 159

- The she-buffalo should be fined eight *māṣhas*. A cow destroying the crops should be fined half of that *i.e.* four *māṣhas*. The goat and
- 5 the sheep when the crops are damaged should be fined two *māṣhas*; thus the connection of words is in the inverse order. Here, as the she-buffalo etc. are devoid of money, the fine is impossible (to be recovered), and therefore their owners should be (held liable). *Māṣha*, moreover, here is the silver one, stated before and equal to two silver coins,
- 10 should be taken, vide the text of the *Bhāṣhyakâra* : " In matters of fine " the calculation of the amount is to be made by golden *māṣhas* ; in case " of trespass by the beasts on crops, however, by other, *i. e.* the silver "*māṣhas*." *Paṇa* means the *kârṣhâpaṇa*; a quarter of that *i.e.* the fourth part. According to *Ratnâkara* : " In the case of goats etc. the quarter
- 15 " should be the penalty when the crops are eaten at night." " For a " cow, a *māṣha* should be ordered as the fine to be paid ; so, for a she- " buffalo two *māṣha*; and for the goats, sheep and calves, the fine shall " be half a *māṣha*" this text of *Nârada*<sup>1</sup> is applicable when the residue of the roots fit to be developed into sprouts had been eaten (159).

20

## Śûlapâṇi

## Yājñavalkya, Verse 159

- Māṣha* here is the twentieth part of a *paṇa*. By the words she-buffalo etc. are expressed their keepers. For the destruction of crops on account of the she-buffalos the keeper shall be fined eight *Māṣhas*, on account of a
- 25 cow, four; on account of a goat, or a ram, two each (159).

The Author mentions a double fine in certain circumstances having regard to the magnitude of the injury

## Yājñavalkya, Verse 160 (1)

- For cattle eating and lying in the field, the fine is double of that mentioned ( above. )
- 30

*Mitâkṣharâ* :—If the cattle after eating the crop in another's field (are allowed) also (to) sleep there unwarded, then *yathoktât dwiguṇo*

**daṇḍo**, a fine double that mentioned above should be understood. Of cattle eating and lying with their calves, moreover, a fine four times that mentioned above should be understood, *vide* the text: "Of those "resting (there) a double fine has been laid down, and of those "accompanied by their calves, a four-fold (*fine*)." 5

Vīramitrodāya

Yājñavalkya, Verse 160 (1)

When after eating the crop in another's land, and being fully satiated, (are allowed to) rest down there without being warded-off, then the she-buffalo and the like should be fined with double the amount of that stated before. For those with their calves and resting down, the fine should be imposed four times of that stated before, *vide* the text: "Of those resting (there), a double fine has been laid down, and of "those accompanied by their calves, a four-fold (*fine*)" 160 (1). 10

The Author mentions an extended application of this rule in regard to other fields and cattle 15

Yājñavalkya, Verse 160 (2)

The fine for these is equal as in the case of lands where grass or fuel is stored; and the fine for an ass or a camel is the same as for a female buffalo.

**Mitākṣharā**:—**Vivīṭah**, *i. e.* the portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded. In the case of a trespass upon that also, **samam daṇḍam**, a fine equal, to that in the case of other fields should be understood in the case of these, **eṣhām**, *i. e.* of the female buffalo and the like. 20

The asses and the camel (joined together make the compound expression), *an ass or a camel*, **kharoṣhṭram**; that should be regarded as the same as for a female buffalo. Wherever and by whichever penalty a female buffalo is punished, in those places and by a similar penalty shall the ass and the camel be each severally punished. In the matter of obstructing the (growth of the) crop the ass and the camel are each equal to a female buffalo, and the fine also has been prescribed according to the extent of the injury, and thus in the compound expression **Kharoṣhṭram** the conjunct compound is not intended. 25 30

Vîramitrodaya

Yājñavalkya, Verse 160 (2)

- Vittam*, land with profuse quantity of grass intended as a pasture ground for the cows and other cattle and guarded by another. There,  
5 for the she-buffalos and other grass-eating beasts; on these a fine *samam*, 'equal,' i.e. equal to the land, to as much as was consumed of the crop, should be laid. An ass and a camel make up the compound expression 'ass and camel' *kharoṣṭram*, that *mahiṣi-samam*, 'equal to a she-buffalo,' i.e. as much fine is laid for a she-  
10 buffalo for the destruction of a particular quantity of crop, so much fine shall be for the ass and the camel also. This is the meaning. [ 160 (2) ]

Sûlapâṇi

Yājñavalkya, Verse 160

- After consuming and being seated at their pleasure, the penalty to be  
15 inflicted should be double of that stated above. Of these i. e. of the she-buffalos and others, in regard to the pasture land the punishment shall be the same. By the word *vitta*, pasture-ground, is meant the portion of land preserved for grass etc. For the destruction of the crops etc. by asses and camels, the punishment should be the same as for a she-buffalo. ( 160 )

- 20 For destroying the crop of another, a fine has been laid down for the owner of a cow (&c). Now, the Author states the rule according to which he should also be made to pay ( the value of ) the crop to the owner of the field

Yājñavalkya, Verse 161

- 25 As much crop as may be destroyed, so much grain shall be paid to the owner of the field; the herdsman shall be chastised, but the owner of the cattle incurs the fine already mentioned ( before ).

- Mitâkṣharâ:**—*Sasya*, crop, is used to denote generally the produce of fields. *Yâvat*, as much, straw, grain or the like, as is destroyed by  
30 cows or other cattle in a particular field *tâvat kṣhetraphalam*, so much produce of the field, shall *swâmi*, the owner, of these be compelled to pay to the owner of the field i. e. according to the valuation determined by the *Sâmantas* in this form : " From such land, the produce would " be so much."



**Gopastu**, but the herdsman, shall only be beaten; he shall not be compelled to pay for the produce. The chastising of the herdsman, accompanied by the pecuniary fine above mentioned, must be understood to apply in the case of an injury to the crop by the fault of the keeper, *vide* the text<sup>1</sup> : "If a cow straying through the fault of the 5  
"keeper, do damage to the crops, no penalty is in that case exacted  
"from the owners (of the cattle); the herdsman (alone) is punishable  
"( for the damage done )."

Again, the owner of the cattle incurs only the fine already mentioned, and not a corporal punishment, if the crop is damaged on 10  
account of his own fault. But in every case the produce must be made  
good by the owner of the cattle alone; inasmuch as he participates in  
the produce of the field by means of the milk obtained from female  
buffalos and the like, fed and fattened on the produce of the field.

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The produce, such as straw &c., remaining after the quantity 15  
consumed by the cows and the like, should be taken by the owner of  
the cattle alone. Since he has purchased it as it were, by paying the  
price adjudged by the arbitrators. And so **Nârada**<sup>2</sup> ( observes ) :  
"When a man claims back the Crop consumed by cattle, that quantity  
"of grain should be given to him ( by the owner of the cattle ) which 20  
"would have been produced<sup>3</sup> from the field in the estimation of the  
"Sâmantas. The chaff shall be paid to the owner of the cattle, and  
"the corn to the cultivator<sup>4</sup>."

#### Vîramitrodaya

On a destruction of crops not only is he to be punished, but he 25  
must be compelled to render the produce to the owner of the field; so  
says the Author

#### Yājñavalkya, Verse 161

*Yavat sasyam*, 'as much crop', as may be destroyed on account of 30  
being eaten by the she-buffalo and the like, the value of so much produce

1. Of Nârada : Ch. XI. 35.

2. Ch. XI. 38-39.

3. वापितम्, from वृ 'to sow,' as also, 'to reap.' The latter meaning better suits the context, and therefore has been selected. See Bâlabhattacha p. 280.

4. Bâlabhattacha adds : "i. e. the owner of the field is not to get anything."

Digest. Vol. II. p. 100.

as may be reasonable should the owner of the field be getting from the owner of the she-buffalo etc. This is the meaning. By the use of the word *tu*, 'however', the Author discriminates the produce of the crop of that portion of the field which has been left out of the damaged part.

- 5 The cowherd, however, is to be chastised only, and should not pay the produce of the field, for the reason, it appears, that the owner enjoys the result of the consumption of the crop in the form of milk etc. Chastisement, moreover, is an extension of the aforestated penalty. vide the text<sup>1</sup>: "If a cow straying through the fault of the keeper, do  
10 "damage to the crop, no penalty in such a case should be imposed upon "the owner; the keeper deserves the punishment". *Gomi*, 'the owner of the cow'. This is only an indication. The owner of she-buffalos etc. also incurs the penalty as stated before. By the word *tu*, 'however', the Author discriminates chastisement ( 161 ).

15

### Śūlapâṇi

#### Yājñavalkya, Verse 161

- As much of the crop as is destroyed on account of the trespass by the she-buffalo etc., so much only as may be determined by the *sāmantas* etc. shall the cultivator obtain from the cowherd. When that is not possible,  
20 the cowherd should be chastised, while the owner of the cows incurs the penalty as stated before. *Uśanâh* mentions an offence for demanding the grain eaten by the cow : "If a man demands back the corn eaten by "the cows, his ancestors will not eat that food, nor will the heavenly "divinities consume it" ( 161 ).

25

The Author mentions an exception in the case of particular fields

#### Yājñavalkya, Verse 162

- There would be no trespass if without any intention ( on the part of the owner ) the cattle stray by a road, or in a field in the neighbourhood of the village store. But in the case of a wilful trespass he deserves punishment like  
30 a thief.

- Mitākṣharâ:**—*Pathi*, by a road, i. e. adjoining the village. In a field situated in the neighbourhood of the village store, if the crop is consumed by the cattle without any design on the part of the owner, there would be no fault either of the herdsman or of the owner. The statement  
35 as to the absence of any guilt, is made with a view to indicate the absence

of any punishment, as well as to prohibit the payment of the value of the crop.

**Kâmachâre**, in the case of a wilful trespass, i. e. if the cattle are designedly made to stray; **chauravat**, like a thief, i. e. that punishment which is meted out for a thief, such a punishment **arhati**, he deserves. 5

This rule moreover is with reference to an open<sup>1</sup> field. Since absence of punishment has been stated by **Manu**<sup>2</sup> in reference to an unenclosed field: "Where (the field containing) a crop is unenclosed, "and if cattle destroy it, the king shall not, in such a case, inflict a "punishment upon the keepers of cattle." If, however, it is enclosed, 10 then a trespass does occur even in (reference to) a field on the roadside &c. The same **Sage** has laid down the preparing of a hedge<sup>3</sup> thus: "He (i. e. the owner of the field) shall make there a hedge over "which a camel cannot peep, and stop every gap through which a "dog or a boar can thrust his head." 15

### S'ûlapâṇi

#### Yājñavalkya, Verse 162

**Pathi**, 'in the way', i.e. in the vicinity of the village pasture grounds. **Kṣhetre**, 'in the field', i.e. without (any) intention (on the part) of the keeper etc. when the crop is consumed by the she-buffalos, etc. there is no fault of the keeper, etc. 20

For purposely (causing) the eating, however, the penalty would be as aforestated (162).

The Author states another rule where there would be no penalty even in the case of particular beasts 25

#### Yājñavalkya, Verse 163

A big bull, beasts let loose, beasts recently delivered, straggling beasts, and like other beasts over whom there is no keeper, and beasts distressed<sup>4</sup> by (the acts of) God or the king should be set free.

1. अनावृत i. e. Unenclosed.

2. Ch. VIII. 238.

3. Manu Ch. VIII. 239.

4. Colebrooke interprets देवराजपरिमुता: as the cause of the disturbance by the beasts, and translates, "For they are impelled by God and the king."

**Mitākṣharâ** :—A bull and ( one which is ) a big one is a ‘ *big bull* ’, **mahokṣha**, *i. e.*, sprinkler<sup>1</sup> of seed. **Utsrṣhīapaśavaḥ**, *beasts let loose, i. e.*, let loose in honour of a deity according to the rites for consecrating bulls or the like. **Sutikâ**, *a beast recently delivered, i. e.* within ten days  
 5 of their calving. **Âgantukâḥ**, *straggling beasts, i. e.*, wandering away from its own herd, and coming from another ( part of the ) country. These should be **mochyâḥ**, *set free*, should not be fined even when another’s crop is consumed. Also those over whom there is no keeper, even these **daivarâjapariplutâḥ**, *being distressed by ( the acts of ) God*  
 10 *and the King, i. e.* being overpowered by God and the King, shall not be punished by the owner of the field wherein the crop has been damaged.

By the use of the term *âdi*, ‘and like others’, are comprehended also the elephants, horses, and the like. These, moreover, are men-  
 15 tioned by **Uśanas**<sup>2</sup> : “The ( owners of the ) elephants and horses shall “not be fined; for they are looked upon as the protectors<sup>3</sup> of ( king’s ) “subjects ; so ( also ) are not punishable beasts with one eye, or hump- “backed beasts, as also those which have been once branded. So is “unpunishable a stray cow, or a cow which has ( recently ) calved or  
 20 “which is unmanageable. So also are the cows exempt from punish- “ment in times of festivity, or on an anniversary day.”

Here, in the case of beasts which are let loose and so are with- out any owner, there is no possibility of a punishment, and these have been referred to as illustrative, *i. e.* as consecrated beasts cannot  
 25 be punished, so a big bull and the like ( should be left unpunished ).

#### Vîramitrodâya

The Author states the penalty etc. in special cases of fields, and animals

#### Yājñavalkya, Verses 162, 163

30 On the way, in the fields adjoining the village pasture-grounds when crops are eaten by a cow etc., the fault is of the owner of the cow, even if it was without the wish of the cowherd. The fault of the cowherd,

1. A bull specially reared for impregnation.

2. Cf. also Nârada Ch. XI. 32.

3. *Aparârka* adds प्रजापाला इति वचनात् राजकीयानामेव हस्त्यश्वादीनामदण्डः ।

moreover, does not come in for a penalty. When, however, the cows etc. are deliberately made to graze, the attendant at the grazing deserves punishment like a thief. This absence of a fault, moreover, is to be observed where the field is uncovered and the eating thereof has been for a short period, *vide* the text of **Manu**<sup>1</sup> : "Where the crop is unenclosed, and  
"if the cattle destroy it, the King shall not, in such a case, inflict a punish-  
"ment upon the keepers of cattle": and also *vide* the text of **Viṣṇu**<sup>2</sup> :  
"On the road at the end of the village pasture ground, there is no fault,  
"except during the harvest time."

*Mahokṣho*, 'a big bull,' *i.e.* a sprinkling bull; *utsrṣṭapaśavo*, 'aban-  
doned animals', such as at the exequial rite of dedication of a bull and  
the like, dedicated animals such as, a bull, a heifer and the like; *sūtikā*,  
'recently delivered', one who has not come out of the tenth day after  
delivery; *āgantukāḥ*, 'stragglers', such as detached from their own herds  
and coming from another region only. By the word *ādi*, 'and others', are  
included "unpunishable are the elephants and the horses; for they are  
"declared as protectors of the subjects" stated in this text of **Another**  
**Smṛti**. *Mochyāḥ*, 'should be set free' *i.e.* should not be punished. Such of  
the cows etc. whose keepers are immersed in calamities due to the act  
of King or God, these should be let off as helpless. In the case of those  
that are dedicated, no punishment is possible as there is no owner, and  
it should be understood that their mention is only by way of giving an  
illustration. By the word *tu*, 'however', are excluded from being released  
all others than those mentioned (162-163).

### Sūlapāṇi

#### Yājñavalkya, Verse 163

"The great bull," such as intended for the God a bull dedicated after  
being branded and marked with a disc. A recently delivered cow is  
one which has not completed ten days after delivery; and stray ones also.  
By the word *ādi*, 'another like', are to be taken those mentioned in the  
text<sup>3</sup> : "Unpunishable are the elephants and horses, for they have been  
"declared as the protectors of the subjects; so also are not punishable beasts  
"with one eye, or humpbacked beasts, as also those bulls which have been  
"branded with a discmark." Of these, those for whom there is no watch-  
man, should be let off. The herdsman should be punished, this is the  
meaning. Similarly those destroyed by the fate or by theft (163).

1. Ch. VIII. 238.

2. Ch. V. 146.

3. Of Uśanas & Nārada see p. 1176 note 2.

The rules as to the owner of a cow have been stated ; now the Author prescribes ( a rule ) for the herdsman

### Yājñavalkya, Verse 164

Let the herdsman restore the cattle every evening in the same condition  
5 in which they were entrusted (to him). For such as have perished or vanished through ( his ) fault, he should be compelled to pay if he had stipulated for his wages.

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**Mitākṣharâ** :—As the cattle were made over in the morning by counting by the owner of them, in the same manner should the  
10 herdsman, in the evening time, restore the beasts to the owner after counting ( thereof ). For cattle perishing or vanishing **pramâdena**, through fault, i. e. through his fault, a herdsman who **kṛtavetanah**, has stipulated for his wages, i.e. whose wages have been fixed, should be made  
15 to compensate the owner. The ( rule for the ) determination of wages has been stated by **Nârada** : “ The annual wages of a herdsman for a hundred head of cattle shall be a heifer, for two hundred a cow, and the milk ( of the whole herd ) every eighth day.” The loss by negligence has, moreover, been clearly explained by **Manu**<sup>1</sup>:  
20 “For a beast which has been lost, or destroyed by worms, or killed by dogs, or ( has died ) by falling into a pit, and if no proper efforts are made, the herdsman alone shall be made to pay.” He shall not be made to pay for those which have been forcibly taken away by robbers. As says **Manu**<sup>2</sup> : “But for an animal forcibly taken away  
25 by robbers, the herdsman shall not be made to pay, provided he informed the owner at a proper time and place.” Of those, moreover, which have perished by ( the acts of ) God or the King, the ear &c. should be exhibited *vide* the text of **Manu**<sup>3</sup>: “If cattle die, let him carry to his master their ears, skin, tails, bladders, tendons, and the yellow  
30 concrete bile, and let him point their particular marks.”

Śūlapāṇi

Yājñavalkya, Verse 164

In the condition in which in the morning the cattle may have been made over by the owner to the herdsman, as without any scar or any other fault, in the same condition in the evening must the cowherd deliver them back. For such as may have died or been lost through (his) mistake, the cowherd should be made to pay, provided wages had been stipulated for him (164). 5

Yājñavalkya, Verse 165

On the loss of a beast by the fault of the herdsman, the fine ordained for him is thirteen<sup>1</sup> *panas* and a half; and he shall pay<sup>2</sup> the money to the owner. 10

Mitākṣharā :—Moreover, when, on account of the fault of the keeper, an animal is killed, the keeper should be ordered to pay a fine of thirteen *panas* and a half; and to the owner an amount equal to the value of the beast, as determined by arbitrators. This verse laying down the measure of the fine has not been mentioned by any one before. 15

Vīramitrodaya

On what occasion, for the trespass by animals is the owner punishable, and on what occasion moreover is the keeper? To such an inquiry intending an answer, that for an offence during the night time, the owner, and for that during the day time, the watchman ( etc. is responsible ), the Author states in regard to the watchman 20

Yājñavalkya, Verses 164-165

*Yathā*, 'in the condition', without any scars etc., and identically of the particular number, the cattle as by the owner may have been made over in the morning to the watchman, those the cowherd should return over in the evening. During the day time, for those which may have died owing to his mistake or may have vanished owing to (their) being taken away, he should be made to pay by regard to the price, if wages had been stipulated *i.e.* fixed for him. Even for those taken away by robbers, etc. when their restoration has been found to be impossible, their price *viz.* the amount of money also has been laid down, *i.e.* has been declared to be given. 25 30

1. Mr. Mandlik reads twelve, instead of thirteen. अर्धत्रयोदशपणः This expression has been interpreted as 12½; see note 1 on p. 1180 below.

2. Mr. Mandlik translates thus : "and he should restore the thing [ *i.e.* the animal ] to the owner." Apparently the word *पशु* in the text of Yājñavalkya has been rendered as 'the thing *i.e.* the animal.' This, however, would not suit the context, as the rule laid down in this verse is applicable when the beast is lost.



- If the cattle die or are taken away by robbers through his fault, for the watchman of the beasts, the fine is thirteen *panas*<sup>1</sup> less by a half i.e. twelve *panas* and a half more, has been ordained to be taken by the King himself. By the use of the first *cha*, are included those which
- 5 have fallen, others than dogs. By the use of the word *tu*, 'however', the Author excludes the punishment for the herdsman who reports a forcible taking away by robbers, tiger, and the like. That has been declared by **Manu and Nârada**:<sup>2</sup> "But for an animal forcibly taken
- 10 "away by robbers, the herdsman shall not be made to pay, provided he "informed the owner at a proper time and place". **Brhaspati** also : "When he does not restore nor complain and report to the owner, "the herdsman is responsible for the fault, and is also liable for a fine "(to be paid) to the King". By the second use of *cha*, the Author removes the doubt about any rule of option owing to a simultaneity of
- 15 punishments (164-165).

## Śûlapâṇi

## Yājñavalkya, Verse 165

- When the beast is lost through the fault of the keeper, the fine is half by thirteen *panas* ordained for the keeper. To the owner, however, a
- 20 money payment, and when the payment of money referred to in the text "if the beasts have died or been lost through mistake etc.," is impossible this text is for the payment of the price (165).

- 25 While speaking of the cattle (generally), the Author speaks about a pasture-ground for cattle

## Yājñavalkya, Verse 166

- By the choice of the village, or by the authority of the king, a portion of land for the pasture-ground for cattle (should be kept). The twice-
- 30 born may always take from any place grass, fuel, and flowers like his own.

**Mitākṣharâ** :—*Grâmechchayâ*, by the choice of the village, i. e. by the choice of the inhabitants of the village regard being had to the large or small extent of the land, or by the King's will, a cattle pasture-

1. The *Vîrmitrodaya* interprets अर्धत्रयोदशपण as अर्धरहितत्रयोदशपण, अर्धाधिकद्वादशपण i.e. सार्धद्वादशपण taking it as an उत्तरपदलोपी कर्मधारय relying upon the *Vârtika* viz. तास्तृतीयपूर्वपदाः समानाधिकरणेन समस्यन्त उत्तरपदलोपश्च. The author of the *Mitākṣharâ* takes it as अर्धाधिकत्रयोदशपणः. In regard to this, the editor of the Chowkhamba series says in, Note 4 on p. 643—तत् सार्धद्विमात्रादिषु अर्धत्रिमात्रादिति महाभाष्यकारशब्दप्रयोगादुपक्षयम् ।

2. Manu Ch. VIII. 233.

ground should be made ; i. e. some good portion of the uncultivated land should be appropriated for the pasturage<sup>1</sup> of kine and the like.

A twice-born man, in the absence of grass, fuel &c. may, for the use of the cow, the (sacrificial) fire, and the Deity, take from anywhere, the grass, wood and flowers (respectively) without opposition, as if (they were) his own. But fruits, he should take from an unenclosed spot only, *vide* the text of **Gautama**<sup>2</sup> : " For the cow and the sacrificial fire, he may take as his own, grass, and fuel, as well as the flowers of "creepers and trees, and fruit also, if they be unenclosed."

This, moreover, supposes an absence of pre-occupancy; for, should a thing be occupied, property also vests by occupancy in others also besides twice-born men, as has been declared by the **same**<sup>3</sup> Author: "A man "becomes owner by inheritance, purchase, partition, seizure, or finding."

As for what is again said in the text<sup>4</sup>: " He, indeed, who seizes "grass, or wood, or flowers, or fruits without asking ( permission of the "owner ) deserves (the punishment of) the amputation of his hand," it applies to persons other than the twice-born, or where there is no distress, or implies a purpose other than that of ( feeding ) the cows &c

### Śūlapāṇi

#### Yājñavalkya, Verse 166

At the option of the village i.e. of the villagers, a pasture-ground for the cows and the like may be made; or by the wish of the king, land. The twice-born may take grass, water etc. from all places, when there is no open forest, he may take like his own from places appropriated by others (166 ).

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Here is another rule being propounded to provide for the convenience of cows and other cattle for standing, sitting &c.

#### Yājñavalkya, Verse 167

A space of one hundred *Dhanus*<sup>5</sup> in extent should be left between a village and the fields ; of two hundred, for a small town ; and of four hundred, for a city.

1. Bālabhāṭṭa notices a different reading. च रक्षणार्थम् i. e. for the protection of cattle.

2. Ch. XII. 25. in Ānandāśrama No. 28. Vol. II. Part I. Sacred books of the East p. 241.

3. Ch. X. 31.

4. Of Narada—Bālabhāṭṭa. Colebrooke assigns it to *Gautama*, See p. 90 Dig. II.

5. A *Dhanus*= pole of four cubits.

- Mitākṣharâ** :—The space to be left between a village and its fields should be one hundred *Dhanus* in extent on all sides, exempt from tillage. **Kharvaṭasya**, round a small town, with abundant thorny bushes growing in continuity around it, the extent of the space should be
- 5 two hundred. **Nagarasya**, round a city, with the concourse of an immense population, the intervening space should be, by measurement, more than four hundred *Dhanus*.

Thus ends the chapter on  
'Disputes between the Owners & Keepers of cattlg.'

10

#### Vîramitrodaya

Indeed, when the (whole) region is absorbed by the agricultural fields, how can there be a provision for the cows to feed or to roam about, in all cases there being a likelihood of punishment? So the Author says

Yājñavalkya, Verses 166, 167

- 15 **Goprachâro**, 'the pasture-ground for cows', i. e. an uncultivated portion of land intended for the cows to roam about, should be determined upon by the residents of the village or by the king at their option by regard to the vastness or smallness of the land. The twice-born, moreover, may take grass, wood, and flowers from all quarters, even
- 20 from the portions of lands accepted as donations, *swawat*, 'like ene's own', i. e. like from his own field.

- Having thus treated of the feeding of the cows, the Author provides for their roaming about viz. *Dhanus-sâtâniti*—'a hundred *dhanus*' etc. A measure of four hands is a *dhanus*, a hundred of that in extent i. e.
- 25 expanse, on all the four quarters, land to be left out in the ground intervening between the village and the fields. **Kharvaṭo**, a place better than a village, but inferior to a town. For that, the intervening space should be two hundred *dhanus*, and for a town, four hundred *dhanus* space should be left between the fields. Moreover, that portion of the
- 30 ground is utilised for the cattle to roam about and rest, therefore there is no penalty. This is the substance (166-167).

#### Śûlapâṇi

Yājñavalkya, Verse 167

- Four hands make a *dhanus*; a hundred of it make a *prastâra*. The intervening space between a village and the fields should be left on all sides
- 35 for the cattle to roam. For a village of the type of *kharvaṭa*, where there are many artisans and agriculturists, twice the above. For a town, four times (167).

## CHAPTER XI.

### Of Sale without Ownership.

Now the Author introduces the chapter from Vyawahâra called "Sale without Ownership." The characteristics of the same have been mentioned by Nârada<sup>1</sup>: "When a thing kept as a deposit, or  
"the property of a stranger lost (by him), and found (by another  
"man), or stolen articles are sold behind his back, it should be  
"considered as a sale (effected) by another than the (rightful) owner."

In such a case what should be done? So the Author says

Yājñavalkya, Verse 168

The owner can recover his own (property) sold by a stranger; the blame would be of the buyer if he buy not publicly. If he purchase from a very low man, in secret, at a very low price, and at an unusual time, he is (considered) a thief.

Mitākṣharâ :—Swam, his own, i. e. property belonging to himself ;  
anyavikritam, sold by a stranger, i. e. sold by one not the owner ; if he  
sees it, then he can recover, labheta, i. e. he should take it. Since the  
element of ownership is absent in the sale by one who was not the  
true owner. The expression "things sold" has been used to indicate  
by implication 'things given or deposited.' For these transactions  
are also similar (in nature) to a sale by one not the owner. And  
hence has it been said<sup>2</sup>: "A sale, a gift, or a pledge made without  
"ownership should be rescinded."

The purchaser, moreover, becomes blameworthy if he buy aprakâsite,  
not publicly, i. e. if he make the purchase in secret. So, if from a very  
low man, hînât, i. e. from one who cannot account for the acquisition of  
the thing by him, rahasi, in secret, i. e. in a lonely place, not ordinarily  
resorted to; hinamûlyena, at a very low price, i. e. at a price lower than  
the original (price) of the thing itself, and velâ-hîne, at an unusual  
time, i. e. at a time which is other than the proper time, (if) he make  
a purchase, (e. g.) at night or such other time, then in such a case,  
the purchaser is (considered) a thief, taskarah, i. e. becomes liable to  
punishment like a thief. As has been said<sup>3</sup>: "When a thing which  
"had been sold by another than the owner, has been recovered by

1. Ch. VII-1. 2. By Kâtyâyana, verse 612-Bâlabhadda. 3. By Nârada-Ch. VII.2.

“the owner, he may keep it. One purchasing openly is blameless ;  
“but a clandestine purchase is equivalent to a theft by the purchaser.”

### S'ūlapāṇi

#### Yājñavalkya, Verse 168

- 5 If one's own property be sold by another without his consent, the former owner should get it back; the blame would be of the purchaser, if the purchase be made not in the open. So also, *kīnāt*, 'from a very low man,' such as a *chaṇḍāla* or the like, who is not likely to have the amount; and even from one who is likely to have the (required) amount,  
10 if purchased in a deserted place, for a very small price, and at a time not proper for a purchase, one may get back the sold commodity from the hands of the purchaser; and the purchaser also is regarded as a thief (168).

What should be done by the purchaser when charged by the owner ? So the Author says

#### 15 Yājñavalkya, Verse 169

Having found goods lost or stolen, he should cause the taker to be apprehended. If time and place prevent ( it ), he shall himself apprehend and hand him over.

- 20 **Mitākṣharâ** :—A thing lost or stolen, belonging to another having got by sale or otherwise, ( the purchaser ) should  
Śrīkara's inter-pretation. *cause the robber to be apprehended, hartāram naram grāhayet*, by persons expert in detecting thieves, for his own exoneration, as well as for the enforcement of the king's penalty. If, however, he has gone to an unknown region or is dead  
25 in course of time, and it is not possible to get at the original thief, then even without producing the seller, he should himself make over that thing to the owner who had lost it. And he is discharged from all liability by doing so much. Thus has ( this text ) been explained by the venerable Śrīkara.

- 30 But it is improper. For, having regard to the text<sup>1</sup>: “When the “seller is pointed out there is exoneration ” there would be the fault of repetition. So this text is being explained otherwise.

The portion of the text “(having found) goods sold, stolen &c.” is a course prescribed for the owner of the lost thing. (Thus) *Having found*

1. Of Yāñ. II. 170. p. 1185 l. 21.

âsâdya, *i. e.* recognised a thing while the same is in the hands of the purchaser, which belonged to himself, and which was either lost or stolen, he should cause the taker, **hartâram**, *i. e.* the seller to be apprehended by the police or others. *If time and place prevent, desâkâlâtîpattau, i. e.* if there is (danger of) waste of time, *i. e.* if there is danger of his running away even before the time a complaint is made to the police on account of their not being near, *he shall himself apprehend, swayameva grhîtwâ, and hand over, samarpayet, to them.*

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### Śûlapâṇi

10

#### Yājñavalkya, Verse 169

The owner also having obtained *naṣṭâpahṛtam*, 'the property which was lost or taken away,' should cause the person taking it, to be arrested by the hands of the officers appointed for recovering stolen property. When the officers for recovering stolen property are not available at the place, and it is impossible to protect the property until the time of their being brought over, then he should himself take it and make over<sup>1</sup> (169).

15

What should be done after the robber is apprehended? So the Author says

#### Yājñavalkya, Verse 170

20

When the seller is pointed out, there is exoneration. The owner receives his thing; the king, the fine; and the buyer his price back, from him who sold it.

**Mitākṣharâ:**—If such a buyer, when apprehended says 'I have not stolen it, but I have purchased it from another', then of him *i. e.* of the buyer, **vikreturdarśanamâtrena śuddhiḥ**, *there is exoneration merely by pointing out the seller.* And then he will not be charged (as a party defendant); but the suit will proceed between the seller pointed out by him and the owner who had lost the thing. As says **Brhaspati**<sup>2</sup>: "When the original taker is produced, the buyer should in no case be sued. But a suit is ordained between the original taker and the owner who had lost the thing." In that suit, if it is found that a sale was made by one who was not the owner, then the man *who sold, vikretâ,*

25

30

1. तस्यैव is obviously not a good reading.  
2. See Balamabṛṭṭi p. 284 ll. 9-11.

*i. e.* the seller, of *it*, *tasya*, *i. e.* of the thing lost or stolen, such as a cow &c.,—from him the *owner i. e.* the one who had lost the thing will get back his *thing*, *drawyam*; *nṛpaścha*, and the *king also*, a fine proportionate to the (degree of) offence, and *kretâ cha*, the *buyer also*, will  
5 obtain *mûlyam*, the *price*, (paid by him).

If, however, he happens to have gone to another (part of the) country, then time should be allowed for his production, regard being had to the number of Yojanas<sup>1</sup> (lying between): *vide* the text<sup>2</sup>:  
10 “Either the purchase should be made in open (market), or the  
“original seller should be made over. In such a case, time should be  
“given to him (*i. e.* the buyer) for the production of the original  
“seller according to (the distance of) the road.” When, however,  
he is not able to produce the original seller on account of his not  
knowing the place (where he has gone), then he becomes exonerated  
15 only upon justifying the purchase, *vide* the text<sup>3</sup>: “If the seller  
“cannot be produced, the buyer should be made to justify the  
“purchase.” When, again, he does not justify the purchase either  
by (the testimony of) witnesses or by an ordeal, nor does he point  
out the original seller, then he himself becomes liable to punishment,  
20 *vide* the text of *Manu*<sup>4</sup>: “The defendant not pointing out the original  
“seller, nor justifying the purchase, should be ordered to pay the  
“amount to the claimant as claimed by him, and also to pay a fine.”

### Śûlapâṇi

#### Yājñavalkya, Verse 170

25 Of the purchaser, the exoneration becomes established at the  
appearance of the seller. This is in regard to an un-open purchase. As  
says *Bṛhaspati*: “Either the purchase should be made in open, or the  
“original should be made over. Time also should be given for the produc-  
“tion of the original by regard to the extent of the distance.” ‘Original’,  
30 *i. e.* the seller; the original owner, should take the property. In the case  
of a purchase not in the open the king shall recover a penalty from the  
purchaser. The purchaser should recover the price from the seller.

1. A Yojana is 4 kosa = 8 miles.

2. Of *Kâtyâyana*, verse 615. *Bâlabhattacha*.

3. Of *Kâtyâyana*, verse 618, *Bâlabhattacha*.

4. Not found in *Manu*. The Author of *Mayûkha* and others assign it to  
*Kâtyâyana*, verse 619.



If a purchase be made in the presence of an assemblage of tradesmen, it need not be paid over to the owner either, So says Marīchi:<sup>1</sup> "What "was purchased in the presence of an assemblage of tradesmen, or was "known to the king's officers; what was purchased from one whose where- "abouts are not known, or where the seller is dead; in all these cases, the "owner should pay half the price and get back his own property. In such "a case, under the law, half of both is taken away. For a purchase from "one who is not known, there is a fault, as also in keeping it" (170).

5

It has been said that "The owner can recover his own (when) "sold by a stranger." What should be done by one who wishes to recover it? So the Author says

10

### Yājñavalkya, Verse 171

Proof of a thing lost must be made by the evidence of the source of the acquisition, or of possession; otherwise, on failure of proof by him, he should be made to pay the king a fine equal to the fifth part.

Mitākṣharā:—Āgamena, *by* (the proof of) *the source of acquisition*, *e.g.* by inheritance, purchase or the like, or also, **upabhogena**, *by possession, i. e.* by proof thereof, *e. g.* "This was my property and the "same was lost and recovered &c" must be made **bhāvyam** *i.e.* established by the owner of it. **Anyathā**, *otherwise, i.e.* if the owner do not make out (his case), **pañchabandho**, *a fifth part, i. e.* a fifth portion of the lost thing, should be paid by the owner of the lost thing as fine to the king.

15

20

Here, moreover, the order<sup>2</sup> (of proof) should be as follows: The original owner should prove the thing (claimed to be) lost as being his. Then the purchaser, in order to obviate the charge of theft, as also that he may get (back) the price (paid by him) should produce the seller. If, however, he is unable to produce him, then for exonerating himself from any charge, he should justify the purchase, and make over the thing (which was) lost to the owner.

25

### Vīramitrodaya

Now begins the portion of *Vyavahāra* known as **Sale without Ownership**.

30

### Yājñavalkya, Verses 168, 169, 170, 171

His own property sold by another who was not the owner, the owner gets back from the purchaser, as a sale by one not the owner

35

1. To the same effect is Brhaspati, see Ch. XIII 7-9

2. See Kātyāyana verses 613, 614; Aparārka p. 777.

cannot invest the purchaser with the right of ownership. The purchaser, moreover, when the purchase has not been made openly, would be guilty of a fault which will bring on punishment. For an open purchase, however, there would be no penalty, *vide* the text of

- 5 **Manu**<sup>1</sup>: "If the original cannot be produced, the purchase being open, "the buyer is exculpated and should not be punished, and be let off "by the King; but the (original) owner who lost the property shall "get it back."

- Similarly, *hināt*, 'from a very low person', as to whom there could  
10 be no possibility of the right of ownership of the article being in him. Also *rahaḥ*, 'in secret', in a lonely place, and *hinamūlye*, 'at a very low price', for the payment of a comparatively small price; for such a purchase the purchaser should be punished as a thief. By the use of the word *cha*, are included sales by slaves and the like. That has been stated by  
15 **Nārada**<sup>2</sup>: "One purchasing from a dependent not authorised by the owner, "or from a disreputable individual, in secret, at a very low price, at an "improper time, incurs liability for the same offence" (168).

- Of the owner of the lost property, when the article which was taken away was found by the owner, the purchaser who had got it by purchase,  
20 when charged by the owner, should cause the person who had taken it away, to be arrested by the officers of the state or the like. So says **Nārada**<sup>3</sup>: "The purchaser should not conceal the source from which "he obtained it; he becomes exonerated by (pointing out) the source "of it. In case of prevarication, he becomes equally guilty, and incurs  
25 "the entire penalty for it (the offence)". 'In case of prevarication' *i. e.* for concealing the origin (of his acquisition). If time and the place do not permit, and in the absence of the state officers or the like, when charged by the owner, the purchaser may himself hand over the seller to the owner (169).

- 30 Here the reason: *vikreṭṭarśanāt*, 'by pointing out the seller', *i. e.* by pointing (him) out to the owner, there is 'exoneration', *suddhiḥ*, of the purchaser, *i. e.* absence of the guilt inducing a penalty. The word *cha*, 'and', has the sense of *tu*, 'however'.

- Thus *vikrayāt*, 'the seller', *i. e.* of that article—since *tasmāt*, 'from him', *i. e.* from the one pointed out by the purchaser, *swāmīno* 'the owner',  
35 *dravyam*, 'the article' *i. e.* that which was the subject-matter of the purchase, *kretā*, 'the purchaser' also, its price, and the King also obtains the penalty in accordance with the (magnitude of the) guilt (170).

1. Ch. VIII. 203.

2. Ch. VII. 3.

3. Ch. VII. 4 for न ऋयेत् the print reads न गृहेन—which is correct and has been adopted in the translation.

It has been stated (above) that he obtains. There, if the right of ownership is established by the owner, then it would be so; the Author says, *Āgameneti*, 'by the source etc.' The lost property, should be established to be of his ownership by (the proof of) the source of his acquisition, such as acceptance as a donation etc., or by (the proof of) possession; or by any other than these *i. e.* by other<sup>1</sup> means of proof. 5

*Tena*, 'by him', *i. e.* by the owner of the lost property, if there the right of ownership is not established, *pañcabandhaḥ*, 'a fifth part', *i. e.* a penalty equal to a fifth portion should be levied by the king. In some books the reading is *pañcamāṁsaḥ*. When the reading is 'to the king', 10 in the dative case-ending, the supplement is 'should be given'.

Here, this is the result. An article sold by one not the owner, should be established by the owner to be of his ownership at that time. By the purchaser also, an open purchase should be established for immunity from the punishment by the king; and to the owner also must be pointed out by him the seller. From him he should recover back his own purchase money, and should make over the article under purchase to the owner and cause a penalty to be paid to the king. In the case of an impossibility to produce him, however, then not the article (itself) to the owner, but the entirety or half (of the price) must he pay to the owner. That has been stated by *Kātyāyana*<sup>2</sup> : "Should the 20 "owner of the lost article establish it as his own by (the evidence of) his "kinsmen and by proving that it was neither given, abandoned, or sold, "the owner gets his own back."

*Brhaspati*<sup>3</sup> : "When a purchase was made before an assembly 25 "of merchants, and was known to the king's officers, but was purchased "from a person of unknown habitation, or where the seller is dead, the "owner, upon paying half the price may recover his own property."

It may be said that it has been stated before "If the original "cannot be produced", and the subsequent text is "when the seller is 30 "in a foreign country", but thus there is no contradiction (168-171).

### Śūlapāṇi

#### Yājñavalkya, Verse 171

*Āgamenā* 'by the source of acquisition,' such as a gift or other means of acquiring wealth the owner of the lost property should establish (his title to) the lost property, *Atonyathā* 'Otherwise' *i. e.* if the owner of the lost property does not prove, a fifth portion should be taken by the king as penalty (171). 35

1. अनोऽन्यथा *Vīramitrodaya* admits other means. Both *Viśvarūpa* and *Aparārka*, however, construe *atonyathā* as अतः प्रकारद्वयादन्यथा मदीयमिति वदतो etc.—and shut out any other means of proof, see *Aparārka* p. 776.

2. Verse 614.

3. Ch. XIII. 7-8

The Author mentions a rule regarding one who shields a robber  
**Yājñavalkya, Verse 172**

He who receives from the hand of another, a thing stolen or lost, without informing the king, shall be fined ninety-six *panas*.

- 5 **Mitākṣharâ :—***Hṛtam prapaṣṭam*, a thing stolen or lost, and lying in the possession of the thief &c., he who takes it back forcibly or by similar means saying 'this man has stolen my thing', without informing the king, such a one shall be fined six and ninety *panas*; as he becomes guilty by shielding the thief.

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10

**Viramitrodaya**

For one who not being the owner and sells, for a purchaser from him, and for the owner who shields these, the Author states a penalty

**Yājñavalkya, Verse 172**

- 15 Should be punished. By the use of the word *tu*, 'however', when information is given, the Author cuts off the penalty ( 172 ).

**Sûlapâṇi**

**Yājñavalkya, Verse 172**

- 20 *Hṛtam prapaṣṭam wâ.*, 'A thing which was either stolen or was lost,' if one takes it from the hand of the thief etc. saying 'this is mine,' without informing the king, such a one should be punished; as he becomes guilty of shielding the thief (172).

The Author mentions a rule regarding a thing recovered by the king's officers

**Yājñavalkya, Verse 173**

- 25 A thing which was lost or stolen, and which had been recovered by the customs officers or by the local watchmen, the owner may take away within one year, (and) after it, the king.

- 30 **Mitākṣharâ :—**When, however, a thing lost or stolen, has been produced before the king by the officers of customs, or by the watchmen of the place, then, if the owner of the lost thing appear **samvat-sarâdarvâk**, *within the period of one year*, he shall get the thing (back). After the lapse of one year, however, the king shall take it.

- 35 The king also should cause a proclamation to be made among the people, about the thing brought by his officers, and preserve the same for one year. As says **Gautama**<sup>1</sup> : "Those who find lost (pro-

“perty) the owner of which is not known, shall announce it to the “king. The king shall cause it to be proclaimed, and hold it in his “custody for a year.” As for the other rule stated by **Manu**<sup>1</sup> viz: “Property, the owner of which has disappeared, the king shall “cause to be preserved as a deposit for three years; within the “period of three years, the owner may claim it, after that, the king “may take it”, it refers to the property of a Brāhmaṇa who is more-over well versed in the Veda and is of good conduct. The deduction of a sixth part has been stated by the **same Author**<sup>2</sup>: “Now the king “remembering the duty of good men, may take one-sixth of property “lost and afterwards found, or a tenth, or at least a twelfth.” The sixth and other parts should be understood to be recovered (according as the thing is claimed) during the third, second, or the first year respectively<sup>3</sup>. This moreover has been explained before.

#### Sūlapāṇi

#### Yājñavalkya, Verse 173

Property which was lost being taken away by thieves etc. and was recovered by the customs officers etc. that the owner may take within one year. Afterwards, however, the king. As to what had been stated by **Manu**<sup>1</sup> and others viz., “Property the owner of which has disappeared “the king should cause to be preserved as a deposit for three years”, that has reference to gold and other durable property (173).

The Author mentions an exception to the rule stated by **Manu** regarding the retaining of a sixth or other part, in the case of particular chattels

#### Yājñavalkya, Verse 174

The owner of a beast having single hoofs should pay four *paṇas*, five for men, and two each for a buffalo, camel, or a cow, and a fourth each for a goat or a sheep.

**Mitākṣharā**:—**Ekasāpṇe**, an animal having a single hoof, e. g. a horse &c., if lost and found again, its owner should pay the king as a fee for its protection four *paṇas*. **Mānuṣhe**, for men, i. e. if the thing be a human being, five *paṇas*. **Ajāvike**, for a goat or a sheep, however, one-fourth (of a *paṇa*) for each. For a buffalo, a camel or a cow, as

1. Ch. VIII. 30.

2. Manu Ch. VIII. 33.

3. Bālabhāṭṭa explains that the order here referred to is inversely to the original enumeration, so that for the first year  $\frac{1}{12}$ th part, 2nd year  $\frac{1}{10}$ th, and for the third year  $\frac{1}{8}$ th part may be taken.

charges for protection, he should pay two paṇas for each head. Thus is the rule to be construed in reference to all. Although the goat and the sheep are mentioned together in a conjunct compound **ajāvīkam**, still by the force of the repetition in the expression 'one-fourth, one-fourth  
5 each' the meaning deducible is that it refers to each individually.

Here ends the chapter on "*Sale by One Not the Owner.*"

#### Vīramitrodaya

If the lost article is not brought back by the owner, but on the other hand by the king's officers, in such a case the Author states the  
10 adjustment

#### Yājñavalkya, Verses 173, 174

By the customs officers, or by the local watchmen, *āhṛtam*, 'recovered', property which was lost, was recovered, that should be preserved by the king for one year; within that period if the owner  
15 who had lost it establishes it as his, he shall take *i. e.* get it. *Parato*, 'after it', *i. e.* after a year, the article for which the right of ownership of (any) other has not been established, the king may take (173).

The Author mentions the charges for the preservation of lost property.

20 *Ekasāphe*, 'for animals with one hoof', such as horses and the like, on the property being lost, four paṇas, to the king, shall the owner of the lost thing pay. When, moreover, the lost article is a human being, five paṇas. For supervision in connection with the buffalos and cows, two for each; and for goat and sheep *i. e.* for a he-goat and a ram, one  
25 should pay a quarter of paṇa for each.

"The lost property which was recovered, the king shall (keep as a) 'deposit for three years. Before (the spring of) three years, the owner  
30 "may take; afterwards the king may take". This text of **Manu**<sup>1</sup>, however has a reference to the (property of a) Brāhmaṇa learned in the vedas and of illustrious character; the present text is in regard to cases other than that, and thus there is no contradiction (173-174).

Thus ends the chapter on **Sale without Ownership.**

#### Śûlapāṇi

#### Yājñavalkya, Verse 174

35 *Ekasāphe*, 'in regard to one-hoofed animals,' such as the horse etc., when lost and recovered by the king, one should pay four paṇas (to the king) for its preservation (174).

Thus ends the Chapter on **Sale without Ownership.**

## CHAPTER XII.

### Of the Resumption of Gifts.

Now is being expounded the Chapter of Law called Gifts, which has obtained a twofold designation *viz.* the Resumption of a gift or Non-resumption of a gift, according as the parties concerned resort to ways which are proper or improper. Its characteristics have been stated by Nârada<sup>1</sup> : “ When a man wishes to take back a thing which he has not properly bestowed, it is called a resumption of gifts, a title of law.” That title of law wherein having bestowed a chattel *not properly*, **asamyak**, *i.e.* by means not laid down as proper, a man wishes to recover it back, ( that title ) is called “ Resumption of Gifts”, *i.e.* that transaction of gift where there is resumption of that which had been given. And by having resort to legally prescribed methods, its converse in the same title at law comes to be known as Non-resumption of gifts. That title at law called the law of gifts in which there is non-resumption or non-retaking of what had been given, is called the “ Non-resumption of gifts.” That, moreover, is fourfold, having

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regard to its division into what may be given and what may not be given : As says Nârada<sup>2</sup> : “ What “ may be given, and what not, valid gifts, and invalid gifts; thus the law of gifts is declared ( to be ) fourfold in judicial “ affairs ” There, by ‘ What may be given’, *deyam*, is expressed to be that which can be a fit subject matter for an unforbidden transaction of gift. By ‘ What may not be given’ *adeyam* is indicated that which is unfit to be given either on account of its being not one’s own property, or its being prohibited ( as a thing to be given ). That, on the other hand, which had been given by one in full possession of his faculties, and which cannot be revoked, is called ‘ a valid gift’, *Dattam*. And ‘ an invalid gift,’ *Adattam* is described to be that which may be taken back. With a view to describe this in brief, the Author says

Yājñavalkya, Verse 175

**One’s property may be given, without detriment to the family.**

Mitākṣharâ :—Swam, *one’s property*, *i.e.* his own **kuṭumbâvirodhena**, *without detriment to the family*, *i.e.* without impediment to the family *i.e.* so much only should be given as may remain after ( providing for the maintenance of the family. Since its maintenance is a necessity.

1. Ch. IV. 1,

2. Ch. IV. 2,



For says Manu<sup>1</sup> "Aged parents, a chaste wife, and an infant son, should be maintained even by doing a hundred misdeeds;" so said Manu. "Without detriment to the family"—by this the Author points out one class of things which may not be given.  
5 "One's property one may give"—by this also, the unendowable character of the five kinds of property viz, the Anvâhita<sup>2</sup> and Yâchitaka deposits, as well as a pledge, a joint property, and a Nikṣhepa deposit has been indicated by the method of negative<sup>3</sup> reasoning. As to the eightfold character of things not liable to be given which has  
10 been mentioned by Nârada<sup>4</sup>: "An Anvâhita deposit, a Yâchitaka, a pledge, a joint property, a deposit, a son, a wife, the entire property "of one who has offspring (4). These have been declared by the "revered sages as inalienable even in times of extreme distress; as "also that which had been promised to another (5)." This text only  
15 intends things which are inalienable; and not as indicating an absence of the right of ownership, as the right of ownership exists over a son, a wife, the entire property, and that which had been promised. The nature of Anvâhita and the rest has been already explained before<sup>5</sup>.

### Śûlapâṇi

#### Yājñavalkya, Verse 175

20 When there is no wife or son, one may give what is his without detriment to (the interests of) the family. When, however, sons etc. exist, the entirety should not be given. What has been promised to one should not be given to another.

25 In a period of adversity, sons etc. may be given; so says Kâtyâyana:<sup>6</sup> "Either in a sale or in a gift, must not be given when unwilling. In "times of adversity however, a gift or even a sale may be."

'Unwilling' i. e. the sons and the rest. Even there, an only son must not be given, vide the text of Vasīṣṭha<sup>7</sup>—"Never, however, should one  
30 give an only son" (175).

1. Not found in the printed edition of Mann.

2. See pages 840, 841 above, for an explanation of these terms as given by Vijñāneśvara himself.

3. The व्यतिरेक method of reasoning i. e. by an opposite way. See note 3 page 707 above for a fuller explanation of this term and also of the corresponding term अन्वय. The meaning is that by saying that one should give what is "his own property", a necessary implication is raised against the gift of things which are not held in the right of full ownership, i. e. over which the donor has only a partial right. 4. Ch. IV. 4-5. 5. i. e. on page 101 text and p. 840 tr. above.

6. Verses 638, 639. 7. Ch. XI. 3.

By<sup>1</sup> reason of the text "One's property he may give", an occasion might arise for the giving away of a wife and a son and the like. With a view to obviate this, the Author says

**Yājñavalkya, Verse 176**

Except a wife and a son. Nor, when there is progeny, his entire property; as also what had been promised to another. 5

**Mitākṣharâ** :—*Dârasutâdṛte*<sup>2</sup>, except a wife and a son, i. e. excluding the wife and the son, he should give his own property; and not a wife or a son. This is the meaning. Similarly, when the son, grandson and similar *anvaya*, *progeny*, exist, the entire property he should not give; *vide* the text<sup>3</sup>: "Having begotten sons, he should "duly initiate them, and provide for the maintenance of these." So also, gold &c., *anyasmai pratisrutam*, when promised (to be given) to another, should not be given to any other. 10

Having thus mentioned property which may be given, with the exception of a wife and a son, the Author mentions in that context, the rule that property which is not alienable should be accepted by the donee in public 15

**Yājñavalkya, Verse 176 (1)**

<sup>4</sup>Let the acceptance be public, especially of immovable property. 20

**Mitākṣharâ**:—Taking over is *pratigrahaḥ*, *acceptance*. That should be made *prakāśaḥ*, *in public*, with a view to obviate any dispute. And *sthâwarasya cha viśeṣatâḥ*, *especially of the immovable*; the acceptance should be made only in public. As it is not possible to prove its possession (by the donee) as can be done in the case of gold and other movables. 25

1. The right of ownership being undefined.

2. See *Kalgavda vs Somappa*, 33 Bom. 669 at pp. 674, 687, where Chandavarkar J. has discussed this passage and its bearing upon the relative rights and positions of a son and a father in a Mitākṣharâ family.

3. Of Manu—Bâlabhattacha.

4. See *Harjivan vs Naran* 4 Bom. H. C. R. A. O. J. 31 at p. 34 and also *Kalidas vs Kanhya Lal*, 11 I. A. 218 at p. 230 where this passage has been translated by the court.

Having thus referred to a subject which only arose incidentally, the Author proceeds further with the subject under discussion, and says

**Yājñavalkya, Verse 176 (2)**

5 <sup>1</sup>Whatever is promised (to be given) shall be given: Having once given (it), let him not resume (it).

**Mitākṣharâ:**—*Deyam pratiśrutam chaiva*, whatever has been *promised* to any one as a religious charity, *must necessarily be given* to him, if<sup>2</sup> the other does not swerve from (the path of) religion. If, however, he swerve, then it should not be given. As *Gautama*<sup>3</sup> has stated :  
10 “Even if he may have promised, he should not give it to one who “has irreligious associations”.

**Datwâ nâpaharet punaḥ**, *what had been given, let him not resume it*. From this it follows that whatever has been completely given according to law, should not be resumed in (the case of) all the seven  
15 classes (of valid gifts). But should be confirmed in that condition; but also that, what had been  
PAGE 116\* given in an illegal manner must be resumed in (the case of) all the sixteen kinds of invalid gifts.

**Nârada**<sup>4</sup> also having premised that “Valid gifts are of seven kinds,  
20 “and invalid gifts of sixteen kinds” has dealt with the characteristics of valid and invalid gifts thus: “The price paid for merchandise, “wages, (a present offered) for an amusement, (a gift made) from “affection, or from gratitude, or as a woman’s<sup>5</sup> Śulka, and a respectful “gift, are the seven kinds of valid gifts” (8).

25 Invalid gifts are the following (sixteen): “What has been given “by one under the influence of fear, anger, sorrow, sudden excitement, or pain; or as a bribe, or in jest, or fraudulently, under false

1. See *Ghelabhai vs Uderam*, 36 Bom. 29 at p. 35, where Chandavarkar J. has translated this passage.

2. This translation differs from that given by Chandavarkar J. in 36 Bom. at p. 35. The translation given there is obviously not in conformity with the text of the Mitākṣharâ, which makes it a condition precedent for the completion of the gift, that the donee should not swerve from religion.

3. Ch. IV. 23.

4. Ch. IV. 8–11. See *Harjivam vs Naran*, 4 Bom. H.C. R. A. O. J. at p. 33.

5. See p. 1135 note 4.

"pretences (9); Or by a child, or by a fool, or by a person not his own master, or by one distressed, or by one intoxicated, or by one insane; or in consideration of a reward thinking 'This man will 'do me some service' (10); and also that which was given to an unworthy person thought to be worthy, or for an unlawful purpose; whatever gift has been made through ignorance (of real facts) is considered as an invalid gift."

The meaning is this: What has been paid as "the price for merchandise" *i. e.* a thing bought. "Wages" *i. e.* the salary paid to one who had done work. "For amusement" *i. e.* given to the bards, singers and the like. "From affection" *i. e.* given to daughters, sons, and the like. "From gratitude" *i. e.* to one who has conferred any obligation; given by way of repaying the obligation. "A woman's S'ulka." *i. e.* that which was given to the relations of a damsel for (bringing about the) marriage. And "a respectful gift" *i. e.* what was given and the result of which is not<sup>1</sup> observed (in this world). These seven kinds of gifts are valid gifts, and must not be resumed.

"Through fear", what was given to the keepers<sup>3</sup> of prisoners &c. "Under the influence of anger" *i. e.* what was given to another (as an inducement) for removing his enmity towards sons and the like. What was given in pangs of grief caused by the separation of a son or a similar cause. "By way of a bribe" *i. e.* given to persons in

1. *i. e.* not having tangible results in this world.

2. For a lucid explanation of the quotation from Nārada see Asahāya's commentary of Nārada on this passage and translated by Dr. Jolly at pp. 129-130 (notes) of Vol. XXXIII of the Sacred Books of the East.

3. वन्दिग्राहादि—This term is indicative of persons of dangerous character, such as rogues, ruffians &c. Asahāya explains it as follows:—"e.g. if an honest man promises one hundred drachmas to a ruffian who addresses him, while he is passing through a forest, with the words, "If thou givest me one hundred drachmas, thou shalt live. Otherwise thou shalt die."

Bālabhāṭṭa suggests as an example, 'gifts' promised or given to the jail officers &c.

4. See *Shri Sitaram Pandit vs Shri Harihar Pandit* 35 Bom. 169 at p. 180 per Chandavarkar J. where this passage has been translated differently thus: "Something paid to a person bound to do an act, with the object of removing an obstacle to the performance of his duty." While Vijnāneśvara's explanation obviously refers to a gift made to a person in authority, with a view to removing all obstructions to the successful termination of the matter under consideration. To the same effect is Asahāya.

authority for the removal of obstruction to ( one's ) business.  
 "In jest" *i. e.* what has been, as a fun, given. Even (when) one  
 man gives his own property to another and that other also gives his  
 to him. This is "a fraudulent gift." "Under a false pretence" *i. e.*  
 5 (where) intending to give one hundred, he stipulates for a thousand,  
 and gives. "By a child" *i. e.* by one who has not attained the age  
 of sixteen. "By a fool" *i. e.* by one who is ignorant of the popular  
 usage. "By one who is not his own master" *e. g.* by a son, a slave,  
 or the like. "By one distressed" *e. g.* by one diseased &c. "By one  
 10 "intoxicated" *i. e.* by one intoxicated by some intoxicant. "By one  
 "insane" *i. e.* by one who is overpowered by an insanity such as that  
 brought on by air &c. "Given in expectation of a return" *e. g.* (where a  
 gift is made in the expectation that) 'he will bring about the accomplish-  
 "ment of my object'. Given to a man who is not versed in (all) the four  
 15 Vedas, on his representing that he was versed in the four Vedas. Given  
 to one, who having obtained a gift on his representing that he would  
 perform a sacrifice, but who appropriates it in gambling and similar  
 other acts. Gifts of these sixteen kinds as enumerated above are  
 invalid even if they were (completely) made; since these can be  
 20 resumed.

The invalidity of a gift made by 'one distressed', attaches to  
 such as are those other than relating to religious purposes: Since  
 Kātyāyana has observed: "If a gift<sup>1</sup> be promised by a person whether  
 "in health or in distress, for a religious purpose, and he die without  
 25 "making it, his son should be compelled to make it good; of this  
 "there is no doubt."

Moreover, here is another text which is expressed in a concise  
 form, but which is common to all (kinds of) disputes: Says Manu<sup>2</sup>:  
 "A fraudulent pledge or sale, a fraudulent gift, acceptance, and any

1. See *Ghlabai vs Uderam* 30 Bom. 29 at p. 35. Where Chandavarkar J. observes, "The word son is here merely illustrative and stands for any one who inherits or takes the promisor's property. These are monitory, not mandatory texts; but the principle underlying them is that, where a Hindu, who has directed a trust of his property for a religious purpose, dies before giving effect to it, Hindu Law authorises his heir to take steps for carrying out his directions, after recovering the property from a trespasser".

2. Ch. VIII. 165.

"transaction where he detects fraud, he (*i. e.* the judge) shall annul "the whole of such (transaction)." *Yoga* means fraud. The meaning is, that by every kind of fraud intended to be practised (in future), (if) the transaction of pledge, sale, gift or acceptance &c. were brought about, upon the discovery of that fraud, these transactions of sale &c should be declared null and void. For him, moreover, who accepts any of the sixteen invalid gifts, and also for him who bestows any of the seven kinds which ought not to be given, a penalty has been declared by Nârada<sup>1</sup>: "He who accepts an invalid gift "through avarice, as also he who bestows one which ought not to "be given, the donor of the unendowable thing deserves punishment, "as also the acceptor of the invalid gift".

Here ends the chapter on the Resumption of Gifts.

#### Vîramitrodaya

Now, the chapter of Vyawahâra known as non-delivery of gifts: "Now, what may be given, and what not, valid gifts, and also invalid "gifts, thus the law of gifts is declared to be fourfold in judicial matters", the Author expounds this text of Nârada<sup>2</sup>

#### Yājñavalkya, Verses 175, 176

*Swam* 'one's', *i. e.* of one's own property, excepting the wife and the son, without detriment to the family, *i. e.* the family which must necessarily be maintained, *deyam* 'may be given'. The meaning is that what may remain after (providing for) the maintenance of the family may be given.

Having, thus stated what may be given, the Author states what may not be given. When there is progeny *i. e.* when the son, grandson and other descendants exist, *sarvaswam*, 'the entire property', should not be given. *Anyasmai yatpratiśrutam*, 'what has been promised to another', *i. e.* what has been agreed to be given; that should not be given to one in excess of that. By the use of the word *cha*, 'and also', are included other things not to be given stated by other R̥shis. So also Brhaspati:<sup>3</sup> "Common property, sons, wife, a pledge, "the entire property, a deposit, things borrowed, and similarly what has "been promised to another, thus the property which may not be given

1. Ch. IV. 12.

2. Ch. IV. 1.

3. Ch. XV. 2.

"is declared to be of eight sorts". "Common property" *i. e.* having several owners; of the son and the wife, they are not to be given only when they disagree. Vide the text of Kātyāyana : "The wives and  
 5 "also sons, however, must not be subjected to sale or gift when ( they  
 "are ) unwilling; the entire property, however, one may utilize for  
 "oneself. In times of adversity, however, may be made a gift or even  
 "a sale." As regards consent, moreover, Vasishṭha<sup>1</sup> states a special  
 rule: "Not, however, an only son should one give, or accept as a gift.  
 "He indeed is for continuing the line of the ancestors. Nor should a  
 10 "woman either give or accept a son excepting with the permission of the  
 "husband." 'Excepting with the permission' is connected with the  
 giving only. In regard to acceptance, by reason of non<sup>2</sup>-existence, even  
 when there is no permission she having the right thereto. Here accord-  
 ing to Smṛtisāra : "By acting against what is prohibited leads to irrel-  
 15 "gion<sup>3</sup>, and not that the donation or<sup>4</sup> gift is not accomplished, in the  
 "case of the gift of an entirety of property or the like".

Brhaspati<sup>5</sup> states the varieties of gifts: "Wages, for the<sup>6</sup>  
 "pleasure, the price of merchandise, the woman's *śulka*, (that given) to  
 "a benefactor, and through reverence, kindness, or affection, thus are  
 20 "stated the eight varieties of valid gifts."

Nārada<sup>7</sup> mentions : "What was given under the influence of  
 "fear, anger, sorrow, sudden excitement, or pain; so also, as a bribe,  
 "or in jest, or fraudulently, or under a false pretence, or by a child, or  
 "by a fool, or by a person not his own master, or by one distressed, or by  
 25 "one intoxicated, or by one insane; or in consideration of some gain,  
 "thinking this man will do me some service".

By one in distress given in charity is, however, a valid gift  
 indeed since Kātyāyana has observed "If he die without making it, his  
 "son should be compelled to make it good; of this there is no doubt".  
 30 "Brhaspati<sup>8</sup> : "When anything has been given through a desire for

1. Ch. XV. 3-5. 2. प्रातिग्रहेऽविद्यमानत्वेन The Benares printed edition omits, an obvious error.

3. *i. e.* the person disobeying may incur the sin of irreligion or disobedience to the dictates of Dharma, see Balusu Gurulingaswami vs Balusu Ramalaksh-  
 manna 23 Mad. 398; 26. I. A. 113.

4. In other words the gift becomes complete दातुरयं प्रतिषेधः न प्रतिग्रहीतु, This is exactly the principle underlying the application of the doctrine of *factum valet*.

5. Ch. XV. 8.

6. *i. e.* When pleased. *e. g.* at a song &c.

7. Ch. IV. 9-10.

8. Ch. XV. 11.



"a reward, or to an unworthy man mistaken for a worthy person, "or for an immoral purpose, the owner may resume the gift".

On the occasion of ( a discussion as to ) what may be given, the Author states the necessity of openness in the acceptance of a gift-*pratigraha* ' an acceptance ' etc. With a view to obviate a dispute, an open acceptance of a gift should be made. Especially of an immovable, the acceptance must be made in the open only, as it is not possible to prove its possession by oneself as ( can be done ) in the case of gold and other movables.

Now the Author proceeds with the matter under consideration : What had been promised as a religious charity must necessarily be given, provided the donee does not swerve from ( the path of ) religion, as *Gautama*<sup>1</sup> has stated : " Even if he may have promised, he should "not give it to one who has irreligious association ". What was given properly as of the aforestated seven kinds, having once given, one should not take back. By the use of the word *cha*, 'also', it is indicated as the cumulative sense of the text, that of the sixteen kinds of invalid gifts, one may take back ( 175-176 ).

Thus in the commentary on Yājñavalkya ends the chapter on  
Nondelivery of gifts.

### Śūlapāṇi

#### Yājñavalkya, Verse 176

An acceptance of a gift should be known to many. *Pratiśrutam*, ' what has been promised, ' i. e. promised by word of mouth. Even there, as regards immovables in which many kinsmen are interested, should be known to the kinsmen and others. What has been promised by a word of mouth must certainly be given. One should not take back, what was once given. As says *Hārīta* : " By not giving what was promised, as "also by cancelling a gift, one goes to various hells, also becomes born a "lower animal."

*Brhaspati*<sup>2</sup> states what may not be given : " What has been given "by one angry, or resenting an injury, or through inadvertence, or by one "distressed, one infatuated, or extremely old or terrified, overpowered by "grief, and what is given in a soft mood, these are declared as invalid "gifts. What is given through desire for a reward, or to an unworthy "man mistaken for a worthy person, or for an immoral purpose, the owner "may resume the gift" ( 176 ).

Thus ends the Chapter on Resumption of Gifts.

## CHAPTER XIII.

## Rescission of Purchase.

- Now is being described the 'Rescission of Purchase.' Its nature has been described by Nārada<sup>1</sup>: "Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed "Rescission of Purchase' a title of law." There also the same Author<sup>2</sup> has stated that on the day on which the purchase was made, on that same day should the thing be delivered back without any change: "When a purchaser, after having purchased an article for a price, considers that he has made a bad bargain, he must, return it to the vendor on that same day in an undamaged condition." In the case of a return on the second or any subsequent day, a special rule has been mentioned by the same Sage<sup>3</sup>: "When the purchaser returns it on the second day, he shall lose a thirtieth (part) from the price; twice as much (if it be returned) on the third day; after that time, it is absolutely the purchaser's." The meaning is, that thereafter a rescission should not be made. This (rule), moreover, has a reference to things perishable by use, other than seed and like other things.

- In the case of the purchase of seed &c, an entirely different rule prevails as to rescission. So the Author says

## Yājñavalkya, Verse 177

- The time (allowed) for the trial and examination of seed, metal, beasts of burden, jewels, females, milch-cattle, and of males is respectively, ten days, one day, five days, seven days, one month, three days, and half a month.

- Mitākṣharâ:—Bijam, seed, i. e. the seed of paddy and other grain ayah, metal, such as iron &c; wāhyah, a beast of burden, i. e. a bullock and the like; ratnam, jewel, i. e. pearls, corals &c.; stree, a female, i. e. a dāsi, dohyam, milch-cattle, e. g. a she-buffalo &c.; pumân, a male, i. e. a male slave. Of these, i. e. of the seed and the rest, the period for trial and examination should be understood to be ten days &c. respectively in the order of (their) enumeration. And when, while under trial and examination, there occurs a repentance on account of the badness of the thing

1. Ch. IX. 1.

2. Ch. IX. 2.

3. Ch. IX. 3.

(purchased), then the sale can only be rescinded within ten days, and not later (than that period). And this is the reason of this rule.

As for the text of **Manu**<sup>1</sup>: "If anybody in this world after buying or selling anything, repent of his bargain, he may return or "take back that chattel within ten days", that refers to things not liable<sup>2</sup> to destruction by use, such as a house, a field, a vehicle, a bed, a seat and the like, excepting iron and the other things with regard to which the rule has been stated (as above).

Moreover, all this has a reference to what was bought without an examination. What, therefore, had been examined<sup>3</sup> and then purchased after an agreement, that is not to be returned; it should not be returned to the seller. That rule has been laid<sup>4</sup> down thus: "The (intending) purchaser shall first examine an article, *i. e.* (before purchasing it), having regard to its faults and excellences; that "which has been approved by the purchaser after a close examination "cannot afterwards be returned to the vendor."

#### Vîramitrodaya

Now the Author expounds the chapter of Law called the **Rescission of purchase**, which has been characterised by **Nârada**<sup>5</sup> thus:

"Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed a 'Rescission of Purchase' "a title of law".

#### Yājñavalkya, Verse 177

Up to ten days and the like is the limit for the examination of seed etc., and therefore if within that interval there is a revulsion about the bought article, then it should be returned, and not after that. This is the meaning. Ten days, eleven days, five days, seven days, a month, three days, half a month, is (the limit) respectively for seed, metal, beasts of burden, such as horses etc., jewels, females, such as the *dâsi* etc., milch-cattle, such as the cow etc., and of males such as servants etc.

1. Ch. VIII. 222.

2. There is a mistake in the text on p. 117. l. 15 for भोगविनश्चर read भोगाविनश्चर.

3. The reading परीक्षितं सत् is better than परीक्ष्य given in the text at l. 16. and in translating the text, the former reading is adopted and not परीक्ष्य. Bâlabhattacharya reads similarly, and notices परीक्ष्य as a V. L. but apparently does not prefer it.

4. By Nârada Ch. IX. 4.

5. Ch. IX. 1.

- “ If anybody in this world after buying or selling a thing, repent  
 “of his bargain, he may return or take back that chattel within ten days.  
 “After ten days, however, one cannot take back or compel it to be  
 “taken back; one taking or returning either should be punished six  
 5 “hundred by the king”. This text of *Manu*<sup>1</sup> has application to seeds  
 only. Vide this text of *Kātyāyana* : “ Whatever article which when  
 “purchased was not known to be faulty, but was afterwards discovered  
 “to be so, that article of merchandise so purchased should be given  
 “(back) to the owner in time, otherwise however, not”. ‘ In time ’ *i. e.*  
 10 within the period of inspection and test; ‘ Otherwise, ’ *i. e.* after that. All  
 this, moreover, is to be observed in the case of all that was purchased  
 without an examination *viz.* since *Kātyāyana* has observed ‘ not known, ’  
 and also the text of *Bṛhaspati*<sup>2</sup>: “ One should inspect a merchandise<sup>3</sup>  
 “himself, and also show it carefully to others; after having accepted  
 15 “after an examination and approval by many, one should not give it up.”

- Even before the stated period also, *Nārada*<sup>4</sup> states a special rule in  
 regard to the return of a purchased article : “ When one, after  
 “having purchased an article for a price, considers that he has made a  
 “bad bargain, he must return it to the vendor on that same day in an  
 20 “undamaged condition. If he returns it on the second day, he shall lose  
 “a thirtieth part from the price; twice as much if it be returned on  
 “the third day. After that it becomes absolutely the purchaser’s.”  
 ‘ After that ’, has a reference to the milch-cattle. “ After having  
 “purchased a thing in the market such as a milch-cattle or the like, if  
 25 “out of repentance a man return it unblemished within time, he shall  
 “bear a tenth part of the price,” this text of *Kātyāyana*, has reference  
 to a period subsequent to the interval ( allowed ) for examination. Or  
 both of these are applicable when the purchased article has been made  
 over to the purchaser. Otherwise, however, “ After having purchased,  
 30 “if a purchaser repent of a thing which has come into his hands, a wise  
 “man in such a case should give up a sixth part, and give up the bought  
 “article.” The adjustment is to be as under this text. Under the text of  
*Manu viz.* “Not the one having a blemish, nor that which was defective,  
 “not one at a distance, nor that which was concealed,” an article, the

1. Ch. VIII. 222-223.

2. Ch. XVIII. 3.

3. ऋषयः. *Bṛhaspati* defines a ऋषयः thus (XVIII. 2) : “Two sorts of property are distinguished, immovable and movable; when a purchase is concluded, the term vendible property ( *pariya ऋषयः* ) is applied to it.”

4. Ch. IX. 2-3.

defect of which was known at the time of the purchase, should not be returned even during the interval for inspection, since Nârada<sup>1</sup> has observed: "A second-hand garment which was in a ragged condition and "was soiled with dust, even if (it be) with blemishes, such an article when "once purchased, cannot thereafter be returned to the seller." (177).

5

Sûlpâṇi

Yājñavalkya, Verse 177

Of the seven things such as the seed etc. ten days and so on respectively is the period for test and determination of merits or demerits. If the fault is known before that, the commodity may be given back to the seller; so says Brhaspati: "Before this, if a defect results in the "article, then it should be returned to the seller, and the purchaser shall "get back the price" (177).

10

While treating of the (time for) inspection of milch cattle &c. the Author states the rule regarding the examination of gold and the like also

15

Yājñavalkya, Verse 178

Gold is not reduced in fire; in (the case of) silver it is reduced by two *palas* in a hundred; in tin by eight, (so) also in lead; in copper, five, in iron, ten.

20

Mitâkṣharâ:—While being heated in fire, gold is not reduced. Therefore, as much may have been delivered into the hands of goldsmiths for preparing a bracelet &c., so much by weight must be returned by these. Otherwise, they should be compelled to make good the loss and be punished too. In the case of silver, however, when (a quantity weighing) a hundred *palas* is being heated, two *palas* are lost; *aṣṭāu*, eight, in the case of tin, *trapuṇi*, and also lead, *sīse cha*, i.e. in a hundred, as necessarily follows. In the case of tin, as also of lead, while a hundred *palas* are being heated, eight *palas* lose weight. *Tāmre pañcha daśâyasi*, in copper five, in iron ten, i.e. in a hundred *palas* of copper, five *palas*, in those of iron, ten *palas* are lost. Here also 'a hundred' is indeed to be understood. As regards white-copper, as it is made out of tin and copper, a (scale of) reduction is to be determined in accordance with (the rules for) these. Artisans, causing a reduction further than this, should be punished.

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## Śûlapâṇi

## Yâjñavalkya, Verse 178

Gold, while being heated in the fire for being manufactured (into an article) is undiminished. Of silver, when a hundred are being heated, two *palas* are reduced. Of tin and lead, for a hundred *palas*, eight *palas*. Copper, for a hundred *palas*, five. Thus in the case of iron, ten are reduced. In case of larger reduction, the goldsmith and the others should be compelled to pay, and should be punished also (178).

The Author mentions an increase in some cases, such as in the case of blankets &c.

## Yâjñavalkya, Verse 179

In the case of woollen and cotton yarns, the increase is ten *palas* in a hundred; in (cloth of) middling quality, five; and in fine quality, three *palas*.  
PAGE 118\*

**Mitākṣharâ:**—In the case of woollen yarn of rough quality, from which blankets and similar things are prepared, in those cases, an increase of ten *palas* in a hundred *palas* should be understood. A similar rule should be understood in the case of cloth &c., prepared from cotton yarn; *madhye*, in (the case of cloth of) *middling-quality*, i. e. in the case of cloth &c., prepared from yarn which is not very fine, the increase is five *palas* (in a hundred). In cloth prepared from fine yarn, the increase should be understood to be three *palas* in a hundred. This (rule), moreover, applies in the case of cloth, which is not washed.

## Śûlapâṇi

## Yâjñavalkya, Verse 179

In the case of a blanket or other cloth manufactured from the ram's hair, as also of cloth woven from cotton yarn, for a hundred *palas* given for weaving, an increase of ten *palas* takes place owing to an addition of paste to the fabric. In regard to the same, when it is not too fine, nor too rough, the increase is five *palas*. For one woven out of fine yarn, three *palas* (179).

The Author mentions a special rule in regard to other articles

## Yâjñavalkya, Verse 180

In the case of embroidered cloth, as also in cloth made of hair, a reduction of a thirtieth part is allowed. There is no decrease, nor an increase in the case of silken cloth or those made of barks.

**Mitākṣharā:**—*Kārmikam*, embroidered cloth, i. e. cloth prepared with pictures thereon. That cloth, where a wheel or a *Swastika* or a like design is woven into by yarn-fibres, is known as *embroidered cloth*, *kārmika*. That cloth, in which hair are woven into e. g. an upper garment, is a *romabaddhaḥ*, cloth made of hair. In these cases, *kṣhayaḥ*, a reduction, by a thirtieth part should be understood. In the case of *silken cloth*, *kaūseye*, i. e. made of silk, and of those made of barks, *valkaleshu cha*, i. e. of cloth prepared from barks of trees, there is neither an increase nor a reduction. But, as much as has been given to the weaver and the like for being woven into, exactly so much should be taken back.

### Śūlapāṇi

#### Yājñavalkya, Verse 180

Where on a woven cloth or the like, a *swastika* or a similar figure is wrought by embroidery with yarn and needle, that is (called) *Kārmika* or-embroidered cloth. Where, in a cloth or the like, hair are woven in, that is 'cloth made of hair,' *romabaddhaḥ*, (e.g.) the Nepala blanket. There, a thirtieth part is the reduction. In cloth produced from silk or barks of trees, such as the fine silk cloth, there is neither increase nor decrease (180)

The commodities being innumerable, it is impossible to consider the rule of reduction or increase in the case of each article. So the Author mentions in general a rule for determining a decrease or an increase

#### Yājñavalkya, Verse 181

When a thing has deteriorated, whatever the experts in those articles may declare after taking into consideration the place, the time, the use, and the strength or weakness, must certainly be caused to be paid.

**Mitākṣharā:**—In the case of a hemp, or a silk cloth, where the article has deteriorated, *naṣṭe*, i. e. has undergone a reduction, whatever the experts in those articles, *drawyāṇām kuśalāḥ*, i. e. those who are versed in rules of increase or decrease in the case of those articles, after having examined into the (circumstances of) *deśam*, place, *kālam*, time, *upabhogam*, use, and also the *balābalam*, strength or weakness, i. e. durability or non-durability, of the article which has deteriorated, may determine *tat asaṁśayam*, that certainly, the artizans must be made to pay.

Thus ends the Chapter on Rescission of Purchase.



## Viramitrodaya

On the occasion of the ( rules regarding the ) examination of seeds etc., the Author states the rules for the inspection of gold and like other articles

## Yājñavalkya, Verses 178, 179, 180, 181

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*Svarnam*, 'gold' *i. e.* of the best quality, is not reduced in fire. *Rajate*, 'in the case of silver,' *śate*, 'for a hundred,' *i. e.* for a measure of hundred, two *palas* become reduced in fire. In the case of tin, zinc and also lead, for a hundred *palas* eight *palas*, for a hundred of the copper *palas*, five *palas*; for a hundred *palas* of the iron, ten *palas* become reduced in fire. By the use of the word *cha*, is added, the loss in the case of white-copper, produced from lead and copper in proportion to the parts of these ( 178 ).

10

In the case of blankets and cloths prepared from the rough yarn of wool or cotton, for a manufacture of a hundred yarns, the increase is ten *palas*. For one of a middling quality, *i. e.* not too fine, for a manufacture of a hundred *palas*, the increase is by five *palas*. In case of very fine manufactures, however, of these, for a hundred *palas*, the increase of three *palas* is accepted, *i. e.* regarded as proper by the experts as it is besmeared with gruel etc. ( 179 ).

20

The cloth on which, after its manufacture, a *swastika*, wheel, or the like is embroidered with the needle, is called *Kārmika* 'the embroidered cloth,'; where in the case of an upper garment or the like, hair are woven, that is *romabaddha*, 'cloth made of hair,' in the case of these, a thirtieth part is regarded as a proper reduction. *Kauśeye*, 'in the case of silken cloth,' *i. e.* cloth made of yarn produced from cocoon of the (silk) worm, as also in regard to cloth etc. made of barks of trees, there is no increase or decrease.

25

By the use of the word *cha*, 'and', is included absence of an increase or decrease in the case of the pounding of wheat and many other things not mentioned ( 180 ).

30

In the case of those not particularly mentioned such as hemp, or linen, and other cloth, what men with special knowledge about the increase or decrease of things may declare after taking into consideration, the place, the time, the use and the strength or weakness of the lost article, that must undoubtedly be paid. By the use of the word *cha*, 'and' is added that in places where a decrease is proper, a decrease may be declared ( 181 ). [ 178—181 ].

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## Sûlapâni

## Yājñavalkya, Verse 181

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When there is a doubt as to the quantity depreciated, whatever is declared by the experts after taking into account the place, the time, the strength, and the weakness, that certainly should be caused to be paid ( 181 ).

Thus ends the Chapter on Rescission of Purchase.

## CHAPTER XIV.

## Breach of Contract of Service.

The Author now sets out discussing another title of law known as the Breach of Contract of Service. Its nature has been described by Nârada<sup>1</sup> thus:—"If a man has promised to render service, and does not  
 "render it, it is termed a Breach of Contract of Service, a title of law." 5  
 Service is the performance of an order. He who undertakes it, and afterwards does not do it, that title of law is known as the Breach of Contract of Service. An attendant, moreover, is of five kinds. A pupil, an apprentice, a hired servant, a man appointed to (perform) 10  
 a task, and a slave. Of these, the first four are known as servants or labourers. These, moreover, do pure work. Slaves, moreover, such as one born in the (master's) house and the like, are of fifteen sorts, and perform impure service such as sweeping the house, the door, the impure places, the street, the dust-bins &c. This has been made clear 15  
 by Nârada<sup>2</sup>: "The sages have described in the *Sâstra* five sorts of "attendants. Among these are four sorts of labourers; and slaves (of "the fifth category) are of fifteen kinds (2). A student, an apprentice, "a hired servant; and the fourth,—a person specially appointed (to "do a thing); these are to be regarded as labourers. Slaves are those 20  
 "born in the house' and the rest (3). The sages have declared that "the state of dependence is common to all these; but that their  
 "respective position and income depends on their  
 PAGE 119\* "particular caste and occupation (4). Also there  
 "are two sorts of occupations; pure<sup>3</sup> work and 25  
 "impure work. Impure work is that done by slaves. Pure work "is that done by labourers (5). Swsweeping the house and the "gateway, the places where impurities are deposited, the street, "the dust-bins; shampooing the secret parts of the body; gathering "and putting away the leavings of food, ordure, and urine (6). And 30  
 "lastly, rubbing the master's limbs when desired; this should be re-  
 "garded as impure work. All other work besides this is pure (7)".

1. Ch. V. 1.

2. Ch. V. 2-7.

3. As opposed to impure which is described further on in the lines following.

There, by 'a student' is meant one who is desirous of studying the Vedas. 'An apprentice' is one who wishes to study the mechanical arts. He who does a work by wages is 'a hired servant.' One supervising the (work of) labourers is an officer 'specially appointed to a task.' 'Place of impurity' means a place where the leavings of the meals are thrown, such as a pit &c. 'A dust-bin' is a place where the sweepings from the house, such as dust &c. are stored. 'Putting away' means throwing off.

'A hired servant' (as referred to) here is of three sorts: so it has been laid down<sup>1</sup>: "Here, the highest class is that of a soldier, the agriculturist is the middle class, and the porters are the lowest class. "These are the three classes of hired servants".

Slaves again are<sup>2</sup>: "One born at his (master's) house; one purchased; one received (as a gift); one obtained by inheritance; one maintained during famine; similarly one who was pledged by his master (26); One released from a heavy debt; one acquired (as a captive) in war; one won through a wager; one who has offered himself saying 'I am thine'; an apostate from asceticism; one enslaved for a stipulated period (27); One who has become a slave in order to get a maintenance; one led in by a female slave; and one self-sold. Thus in all fifteen kinds of slaves are declared in 'S'âstra' (28)". Born in the (house of the master) of a female slave is 'one born at his (master's) house.' 'Purchased' *i. e.* by (the payment of) a price. 'Received' *i. e.* by a gift &c. 'Obtained by inheritance' *i. e.* one who was a slave of the father or other ancestor. 'Maintained during famine' *i. e.* one, who during famine, was saved from death in consideration of his becoming a slave. 'Pledged by his master' *i. e.* who was made a pledge upon the acceptance of money (by the master). One reduced to slavery by being freed from his debts is 'a slave released from debt'. 'Acquired in war' *i. e.* one conquered and captured in a battle. 'Won through a wager' *i. e.*

1. By Nârada Ch. V. 23.

2. See Nârada Ch. V. 26-28. It would be interesting to compare the provisions laid down here with similar provisions in Roman Law, and the learned reader is referred to the same. The rules regarding the emancipation of slaves have a peculiar resemblance to those found in Roman Law.

one won after a stipulation 'In case I am defeated in this dispute, I shall become your slave.' "One who has offered himself saying 'I am "thine," i.e. one voluntarily offering himself as a slave saying 'I am thy slave.' 'An apostate from asceticism' i.e. one who has swerved from the vow of asceticism. 'Stipulated' i.e. one made a slave with the stipulation 'he shall be your slave for such a time.' 'A slave of maintenance' i.e. one who has entered into a perpetual state of slavery in lieu of maintenance. 'Led by a female slave'—a female slave (*wadawâ*) i.e. one born in the house; led by her i.e. out of a fancy for her, one who has married her and entered into slavery. He who sells himself is a 'self-sold slave.' Thus these are the fifteen sorts. 5 10

As for the seven-fold classification stated by **Manu**<sup>1</sup> in: "One made "captive under a standard, a slave for maintenance, one born in the "house, one bought, and one who is given, one inherited from ancestors, and a slave of punishment, are seven kinds of slaves", that is intended to point out that these persons are (regarded and treated as) slaves, and not with a view to limit the numbers. 15

Of the attendants (mentioned before) viz. a pupil, an apprentice, a hired servant, an appointed labourer, the course of conduct for a pupil has already been stated before<sup>2</sup> viz: "Being invited (by the "preceptor) indeed he ought to study; and whatever is acquired by "him he should offer to him i.e. the preceptor." The rule for the specially appointed workman and the hired servant will be mentioned in the chapter on 'Payment of Wages'<sup>3</sup> in the text: "As much work "a man performs, so much will be his wages" &c. 20 25

With a view to state a Special Rule regarding a slave and an apprentice, the Author says

### Yājñavalkya, Verse 182

One enslaved by force, and also one sold by robbers, are released (from slavery); one who saves the life of his master (is released), as also (are they released) by paying the expenses of maintenance or by paying off the debt. 30

1. Ch. VIII. 415.

2. See Yājñavalkya Âchârâdhyâya Verse 27 p. 107.

3. See Verse 196 further on page 1234.

Mitākṣharâ:—Balât, by force, i. e. by a forcible obstruction, one dāsikṛtaḥ, who has been made a slave. He who being overpowered and taken away by robbers vikṛitaḥ, was sold. From the use of the word 'also', api, are included one 'pledged' as also one 'given.' Such a one muchyate, is released. If the owner do not release, then he should be caused to be released by the king. Nârada<sup>1</sup> also has observed: "Those who are sold after having been captured by robbers, and those who are enslaved by forcible means, must be emancipated by the king. Slavery in their case is not allowed." He who saves the life of his master, when he was confronted by robbers, tigers &c.,—such a one also—should be caused to be manumitted. This last is a reason for freedom from slavery common to all (kinds of) slaves, since Nârada<sup>2</sup> has observed: "Should (however) any one out of them save his master's life, when his life is in peril, he shall be released from slavery, and shall also take a son's share<sup>3</sup>."

The cause for the manumission of 'a hired servant' and others respectively has been mentioned. Persons who have become slaves on account of being maintained during famine, as also slaves of maintenance, are released by paying off the amount of maintenance i. e. by offering as much money to the master as may have been consumed from the date of his enslavement. While a pledged slave and a slave of indebtedness (are released) by the redemption of these. He is released by repayment of the amount, together with interest after receiving which he was pledged by the master, or also that after paying off which, he was emancipated by the master from the liability of the creditor.

A special rule also has been stated by Nârada<sup>4</sup>: "One maintained during famine is released from bondage if he gives a pair of oxen. What has been consumed during famine, cannot be repaid (in value) by labour (31). A slave of maintenance is released immediately on his giving up the subsistence (36). Even a pledged slave (is released)

1. Ch. V. 38. This is a general rule applicable for any kind of slave. See further on.

2. Ch. V. 30.

3. i. e. a share equal to that of a son (Bâlabhṛṭṭi).

4. Ch. V. 31. 36 (1) and 32, and 33.

"if his master redeems him by discharging the debt ( 32 ). It is, however, by paying the debt with interest that a debtor is released from "slavery ( 33 )."

The modes of manumission of a slave who has offered himself by saying 'I am thine', of a slave captured in war, of one won through a wager, of one enslaved for a stipulated period, and of one enslaved on account of his being enamoured of a female slave, have also been similarly laid down by the **same Sage**<sup>1</sup> for all these cases respectively :  
 "One who has come forward and offered himself declaring 'I am 'thine', one made a prisoner in war, and one won through a wager, "these are released on giving each a substitute whose capacity for "work is equal to theirs ( 34 ). Also one enslaved for a stipulated "period becomes emancipated on the expiration of the period ( 35 ).  
 "One enslaved on account of his being connected with a female slave "is released upon the female slave being kept<sup>2</sup> in check ( 36 )" *i. e.* by being prevented from having intercourse with the slave.

Thus, therefore, in the case of slaves who are born in the house, bought, obtained, acquired by inheritance, and self-sold, there is no emancipation except on account of the general cause of emancipation (mentioned above) *viz.* by saving the life of the master and thus securing his favour. Since no special mode has been mentioned.

The act of emancipation, moreover, should be performed in the following manner as has been laid down by the **same Sage**<sup>3</sup> : "He who, "pleased in his mind, wishes to emancipate his own slave, shall take "from his<sup>4</sup> shoulders a jar filled with water and smash it ( 42 ). He "shall sprinkle his head with water containing whole grain<sup>5</sup> and "flowers, and having declared him a free man three times, he shall "dismiss him with his face turned towards the East."

1. Ch. V. 34, 35 ( 2 ) and 36 ( 2 ).

2. निग्रहात्—By restraint; see the explanation in the Mitākṣharā. The Vivādachintāmaṇi explains it as "by the abandonment of the female slave." see Colebrooke Digest III. I. 4. Vol. II. p. 28.

3. Nārada Ch. V. 42-43.

4. *i. e.*, of the slave's shoulder.

5. Generally rice. Sometimes it may be any other grain such as wheat &c. But it must be whole and not crushed or otherwise damaged.

## ŚŪlapāṇi

## Yājñavalkya, Verse 182

One who has been enslaved by force, or sold by robbers, should be released from bondage; one who saves his master's life, when his life is in danger; the slave for maintenance, by paying up the expenses for maintenance, and also by giving maintenance in times of famine. One maintained in adverse times also pays in cash, or a pair of cows (182).

There is, however, no emancipation of an apostate from asceticism; so the Author says

## 10 Yājñavalkya, Verse 183 (1)

An apostate from asceticism shall become the king's slave till death.

Mitākṣharâ:—Pravrajyâ, *asceticism*, means a complete renunciation (of all worldly objects)—*Sannyâsa*. One who is an *avasitah*, *apostate*, therefrom *i. e.* who has swerved from it. (Such a one) if he has not undergone expiation, indeed becomes a slave of the king. Death alone shall terminate this (kind of) servitude. In no other time can there be emancipation.

The Author mentions a rule regarding slaves having regard to (the several) orders, *Varnas*.<sup>1</sup>

## 20 Yājñavalkya, Verse 183 (2)

Slavery is in the descending order of the *Varnas*, and not in the ascending order.

Mitākṣharâ:—Of the *Varnas* such as the Brāhmaṇa and the rest, a state of slavery shall exist *ânulomyena*, *in the descending order*. Thus, of a Brāhmaṇa, a Kṣatriya and the rest may become a slave; of a Kṣatriya, the Vaiśya and the Sûdra; and of a Vaiśya, a Sûdra; thus the state of slavery shall operate in the descending order. Of an ascetic, however, who renounces his own duties, slavery is indeed ordained even in an inverse order. As says Nârada: "Slavery is not ordained in the inverse order of the (four) *Varnas*, except where a man violates the duties peculiar to his class. Slavery is considered as analogous to the condition of a wife."

1. *i. e.* the classes. See Yājñavalkya Âchâra. Chapter IV. On the distinction based on *Classes (Varṇa)* and *Castes (Jāti)* see verses 90-96 pages 241-267.

2. Ch. V. 39.



### Virāmitrodaya

Now begins the Chapter known as 'Breach of Contract of Service'. Its nature has been described by Nārada<sup>1</sup>: "If one after having under-  
"taken to render service, does not render it, it is called a 'Breach of  
"Contract of Service,' a title of law." Manu, moreover, has not treated  
this separately as a title of law, as he has included its treatment in the  
title called 'Non-payment of wages', intending it for some reason to  
be so stated.

An attendant, moreover, is of five kinds : A pupil, an apprentice,  
a hired servant, one appointed to (perform) a task, and a slave. There,  
pure work is for four, and impure work is for the slave, vide the text of  
Nārada<sup>2</sup>: "Impure work has been stated to be for the slaves; a pure  
"work is for labourers. Sweeping the house and the gateway, the places  
"where impurities are deposited, the street, the dustbins; shampooing  
"the secret parts of the body; gathering and putting away the leavings  
"of food, ordure and urine. And lastly rubbing the master's limbs when  
"desired; this should be regarded as impure work. All other work  
"besides this is pure." There, a pupil is one in need of the study of the  
Vedas; an apprentice is one desirous of learning some art; a hired servant,  
is one performing work for wages; one appointed to do a work *i.e.* one  
supervising by attendance over the workmen doing work. A slave also,  
has been stated by Nārada<sup>3</sup> (same as above p. 1210. ll. 13-21.)

Among these, the course of conduct for a Pupil has already been  
stated before<sup>3</sup> *viz.* "Being invited (by the preceptor) indeed, he ought  
"to study, and whatever is acquired by him, he should bestow on him."  
Of the hired servant and of the one appointed, will be stated in the  
Chapter on Payment of Wages. About the slaves, and the apprentice,  
however, the Author states here

### Yājñavalkya, Verses 182, 183

One forcibly made a slave, one sold by robbers and thus made a  
slave; and by the use of the words *cha*, 'and', and *api*, 'even', one given  
by him, as also one kept as a pledge, is released from slavery. He more-  
over, who saves the life of the master when attacked by robbers, tiger,  
etc. such a one is manumitted. By the use of the word *api*, 'even', are  
added other reasons for the manumission of a slave. Nārada<sup>4</sup> states these:

1. Ch. V. 5-7.

2. Ch. V. 26-28.

3. See Âchârādhyâya 27 p. 107 above.

4. Ch. V. 31-36.

“One maintained during famine time, is released from bondage if he gives a pair of oxen. What has been consumed during famine, cannot be repaid (in value) by labour (31). A slave of maintenance is released immediately on his giving up the subsistence (30). Even a pledged  
 5 “slave (is released) if his master redeems him by discharging the debt (32). “It is, however, by paying the debt with interest that a debtor is released (33). One who has come forward and offered himself declaring ‘I am thine’, one made a prisoner in war, and one won through a  
 10 “wager, these are released on giving each a substitute whose capacity for work is equal to theirs (34). Also one enslaved for a stipulated period becomes emancipated on the expiration of the period (35). One enslaved on account of his being connected with a female slave is released upon the female slave being kept in check (36)”. “By work  
 15 “equal to theirs” *i.e.* by performing work which is proper for him. ‘Upon the female slave being kept in check’ *i.e.* by giving up intercourse. *Kātyāyana* says : “When one has intercourse with his own slave, and she gives birth (to a child); then at the sight of the issue she should be made a non-slave; as she is with a progeny.” This, however, is only when the master is without a son etc. according to *Prakāśa*, *Pārijāta*,  
 20 *Ratnākara* and others.

By favour also one may be released from bondage. *Nārada*<sup>1</sup> states the procedure on such an occasion :—“He who, being pleased in mind, wishes to emancipate his own slave, shall take from his shoulders a jar filled with water and smash it (42). He shall sprinkle his head with water  
 25 “containing uncrushed grain and flowers and having declared him a free man three times, he shall dismiss him with his face turned towards the East. From that time onwards he should be called ‘one protected by the master’s favour,’ food may be eaten with him, and a gift may be conferred on him ; thus he becomes approved of the good.”

*Kātyāyana*: “The master is declared to be the owner of the  
 30 “property which was of the slave. But to what was obtained by favour or by sale of that property the master is not entitled. One not a slave, if she be married by a slave, she also gets into the status of a slave ; because her husband is her lord; and her lord is under the bondage  
 35 “of the master.” ‘By favour &c.’—the meaning is that by one’s own favour, or by the sale of oneself whatever money may have been obtained, that the master cannot claim.

‘By a slave’ etc.—Here if the word non-slave is used in anti-thesis to the word slave referred to in regard to the marriage, any other not owned by any one, or not having a master at all, when she has been married, she becomes of the ownership of the master of the husband. Necessarily, therefore, it follows that marriage with a slave has the result of release from the bondage of the former owner. And it is for this that this text occurs in a chapter on it. The cause of ownership, moreover, is the marriage by a slave with the consent of the former master. In the case of an opposition, however, there would be no obliteration of the ownership of the former master, just as in the case of a marriage with a servant girl. According to the moderners, however, if she is married by a slave without the consent of the former master, then a white courie alone should be given to the former master by the new master, and not that the status of slavery itself is not induced. They say that there exists the status of slavery in regard to the former master as an inducing cause for the taking of a white courie. As for the declaration of Harischandra in the *Mārkaṇḍeya Purāṇa*: “Even if released by the master a *Śūdra* is never manumitted from slavery that is born with him; who will wipe it away from “him?”, that is intended as deprecatory of a slave; otherwise, it should be remembered, that his own manumission from slavery would not take place (182).

*Pravrajyā* etc. “asceticism etc.” After entering into the ascetic order, one who swerves off from it, *sa rājño dāsa āmaraṇāntikah*, ‘he is the King’s slave till death,’ i.e. until the time of his death his status of slavery continues. Of him, there would be no release as a slave. This is the meaning.

*Varṇānām* etc., ‘Of the *varṇas* etc.’, slavery can occur in the descending order, and not in the inverse order. As for example, a *Kṣatriya* can be a slave of a *Brāhmaṇa*, and not of a *Vaiśya* etc. This, moreover, has application to others than those who have been apostates from asceticism. Since *Nārada*<sup>1</sup> has stated: “In the “inverse order of the *varṇas*, slavery is not ordained, excepting in the “case of those who violate their own peculiar duties. Slavery has been “regarded as analogous to the condition of a wife.” Both these clauses *viz.* beginning with *varṇānām* and *pravrajyāvasitah* have application to others than a *Brāhmaṇa*. For<sup>2</sup>: “Where (the members of) the three

"varṇas of the twice-born class become apostates from asceticism, the king "should cause the Brāhmaṇa to be banished, and reduce to slavery the "Kṣhatriya and the Vaiśyas." The expression Kṣhatraviṭ, the Kṣhatriya "and the Vaiśya " is a collective dual compound ( 182–183 ).

5

### Sûlapâṇi

#### Yājñavalkya, Verse 183

Those who become apostates, *i. e.* have fallen off from the vow of asceticism, &c., and being of the Kṣhatriya, Vaiśya or Sûdra varṇas become the slaves of the Kṣhatriya King. This status of slavery is, moreover, in the descending order, and not in the ascending order. A Brāhmaṇa can never be the slave of a Kṣhatriya. As says Kātyâyana : "Among the three Varṇas, there can never be a slavery for a Vipra ; even "though of the same varṇa, a vipra should never be made a slave" (183).

15

The Author mentions the duties of an apprentice

#### Yājñavalkya, Verse 184

Though he have acquired his art, the apprentice must remain in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the proceeds thereof.

20 Mitâkṣharâ:—Antevâsî, an apprentice, vaset, must remain, gurorgṛhe, in the house of the master, kṛtakâlam, during the stipulated period, *i. e.* for as long a period as may have been fixed under an agreement, *e. g.* thus, "I shall reside in your house for a period of four years for "learning medicine or any other art &c." and even when he has acquired the desired lore, even before the (expiration of) four years.

25

How should he remain ? Guruprâptabhojanaḥ, receiving his subsistence from the teacher, he who has obtained his food from his teacher—a person of such a description. Tatphalapradah, giving to him the proceeds thereof, he who offers to the teacher the proceeds of it, *i. e.*, of the art— thus he should reside.

30

Even a special rule has been indicated here by Nârada<sup>1</sup> : " If one "wishes to be initiated into the art of his own "craft, with the sanction of his relations, he may "go and live with a teacher, after having fixed the "duration ( of his apprenticeship ) ( 16 ). The master shall teach

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"him, feeding him at his own house. He must not employ him in  
"work of a different description, and must treat him like a son (17). If  
"one forsakes a master, who instructs him and whose<sup>1</sup> character is un-  
"exceptionable, he shall be compelled by force to remain (at his  
"master's house); such a one makes himself liable for a corporal 5  
"punishment and imprisonment (18). Even though his course of in-  
"struction be completed, an apprentice must continue to reside at  
"the house of his master, untill ( the expiration of ) the fixed period;  
"whatever work he may do, while there, the profits thereof shall belong  
"to the master (19). After he has acquired his art, at ( the end<sup>2</sup> of ) 10  
"the stipulated period, the apprentice shall reward<sup>3</sup> his master plenti-  
"fully, and return home, after having obtained leave from him (20)".

The word *Vadha*, 'Corporal punishment', here is used in the sense  
of 'beating', having regard to the trifling nature of the fault.

Thus ends the Chapter on **Breach of Contact of Service.** 15

### Vīramitrodaya

After having stated the rules relating to the slaves, the Author  
states the rules relating to apprentices

#### Yājñavalkya, Verse 184

'In your house, I shall stay for such a period,' thus having made 20  
*i. e.* fixed a period, at the residence of the teacher, *Kṛtasilpōpi*

1. असंदुष्टम्—who has not been found fault with, as having been concerned in  
any moral sin or legal crime.

2. *i. e.* when the time fixed for his apprenticeship ends. *Asahāya* and  
*Bālabhāṭṭa*.

3. Dr. Jolly translates in this manner. According to the interpretation of  
*Bālabhāṭṭa*, प्रदक्षिणम् would only mean a special part of worship *viz.* going round  
the object of worship with folded hands. For he interprets अनुमान्य as तोषयित्वा,  
and with that view the literal meaning of प्रदक्षिणम् may not have any force. The  
reader will note that *Bālabhāṭṭa*'s interpretation is the one which will strike  
every one having in mind the sense ordinarily conveyed by a प्रदक्षिणम्.

‘ though he have acquired his art,’ *i. e.* even when he has secured the art, still, the *antevâstī*, ‘ apprentice ’, one who has received subsistence *i. e.* meals from the teacher, such a one should stay at his place paying back the fruit of that art as his fee. Any duty in excess of the  
 5 art, however, the apprentice should not be made to perform. So Nârada<sup>1</sup> says : “ He must not put him to any other work ; and “should treat him as a son. ” So also<sup>2</sup> : “ If one forsakes a master “who instructs and whose character is unexceptionable, he shall be  
 10 “compelled by force to remain (at his master’s place); such a one makes “himself amenable for a corporal punishment and imprisonment. ” Similarly<sup>3</sup> : “ After he has acquired his art, at ( the end of ) the “stipulated period, the apprentice shall reward his master plentifully, “and return home, after having obtained leave from him. ”

Thus ends in the Commentary on Yājñavalkya the chapter called  
 15 the Breach of Contract of Service.

### Śûlapâṇi

#### Yājñavalkya, Verse 184

*Antevâstī*, “an apprentice”, a pupil of a particular kind ; *Kṛtasilpah*, ‘who has acquired his art’ *i. e.* who has mastered the art of gold manufacture, &c. such a one *Kṛtakâlam*, ‘for the stipulated period’, having  
 20 obtained his meals from the teacher, must reside in the house of the teacher alone. The receipts of the art such as the kinds of jewellery &c. he should offer to the preceptor (184).

Here ends the Chapter on Breach of Contract of Service.

1. Ch. V. 17.

2. Ch. V. 18.

3. Ch. V. 20.

## CHAPTER XV.

### Transgression of a Compact.

Now is being described (the law regarding) the 'Transgression of a Compact'. Its characteristics have been indicated by Nârada<sup>1</sup> through (a discussion of) its contrary : "The (general) rules settled among "Pâkhandis<sup>2</sup>, Naigamas<sup>3</sup> and like others is called a Compact (*Samaya*). "Non-Transgression<sup>4</sup> of such a compact thus gives rise to a Title of "Law known as Transgression of a Compact." Settlement of rules in accordance with the special<sup>5</sup> provision of law is a compact; the non-transgression of the same *i.e.* non-breach *i.e.* observance. When this is being transgressed, it gives rise to a Title of Law. This is the meaning.

The Author states a rule by way of an introduction to the same  
Yājñavalkya, Verse 185

A king, having erected a building in the town, and having therein lodged Brâhmanas, versed in the<sup>6</sup> three Vedas provided<sup>7</sup> with livelihood, should say to them 'Protect your *Dharma*<sup>8</sup>.'

1. Ch. X. 1.

2. Pâkhaṇḍis—*i. e.* Heretics—Kṣhapanakas *i. e.* the Buddhist or Jain mendicants, and others who do not accept the authority of the Vedas. See Mitākṣharâ further on Yājñ. II. 192 p. 1228.

3. Naigamas—traders and others. Those who regard the Veda as authority but only as the word of an *Āpta* *e. g.* the Pâśupatas and others. See Mitākṣharâ on II. 192.

4. This is why Viññâneśvara characterises this definition of Nârada as one given in a negative manner. *Apâkarma*, is the transgression of a compact (*Samaya*). Its 'non-transgression', *i. e.* performance, is *Anapâkarma*; and a chapter of law which deals with the non-performance or transgression is a chapter entitled 'Transgression of a Compact.' व्यतिक्रमेण when freely translated here, only means 'by its opposite'. It is in this way: The Chapter is headed 'Transgression of Compact', while the definition gives what is a 'Compact' and how it is maintained. Thus the subject of the 'transgression of a compact' is illustrated by a treatment of its opposite.

5. पारिभाषिकधर्म—*i. e.* the particular provisions of the Dharma-Śâstra. The Dharma or rule, as propounded in the Dharma-Śâstra bearing on special contracts or agreements.

6. *i. e.* the *Rk*, *Yajus* and *Sâma*. These are the three Vedas indicated by the expression *Traividyâ*.

7. *i. e.* after having properly endowed the institution with funds for the maintenance of persons acting there *viz.* for their payment &c. The meaning is that he should assign land, money, or the like for their maintenance, so that they may perform their duties without any interruption.

8. *Svadharmâ*—*i. e.* the duties binding upon self (*Sva*). The word *sva* (self) applies to all, and indicates the law, in general, holding among the people. The author declares here what should be done by the Brâhmanas thus enjoined.



5 Mitākṣharâ:—The king, in his town *i. e.* in the fort or other place, having erected **sthānam**, a building, *i. e.* a white house, and **tatra brāhmaṇān nyasya**, therein having lodged Brāhmaṇas, *i. e.* having appointed them there, and having provided that assemblage of Brāhmaṇas versed in the three Vedas, with livelihood *i. e.* having endowed them with land, gold &c. should say to these Brāhmaṇas “May your own *“Dharma* be observed by you” *i. e.* the rules regarding the Varṇas<sup>1</sup> and Āśramas as dictated in the Vedas, and Smṛtis.

#### Vîramitrodaya

10 Now the Author begins the treatment of the Chapter of Law called the “Transgression of a Compact.”

#### Yājñavalkya, Verse 185

15 Rājâ, ‘the king’, in his own town, having created **sthānam**, ‘a place’ such as a white house, **tatra Brāhmaṇān nyasya**, ‘and having therein lodged Brāhmaṇas’, **trāividya**, ‘those well versed in the three lores’, **vṛttimat**, ‘provided with livelihood’ *i. e.* having made them rich and affluent in gold etc. “May the duties of the Varṇas and “Āśramas be looked after by you” thus should he say to them, *i. e.* appoint them to the task. By the use of the word *tu*, ‘however,’ is  
20 excluded the inauguration without provision for maintenance (185).

#### Sûlapâṇi

#### Yājñavalkya, Verse 185

25 The king having caused a building to be erected in his town, and having therein lodged Brāhmaṇas renowned for their learning and heredity, should make provision for maintenance proper for a married man, for one who is accomplished in the study of the three lores such as the *Rk* and the rest, should say to them thus: “You should protect your *“Dharma.”* As says Brhaspati<sup>2</sup>: “The king should watch *Vipras* who are “Vedic scholars, learned divines, and have maintained the sacred fire, and  
30 “should provide maintenance for them. They should perform for the “citizens their ordinary and special rites, as also performances for a particular objective, so also the expiatory and the auspicious ones, and declare “a decision in doubtful cases” (185).

1. The four principal Varṇas are the Brāhmaṇa, Kṣatriya, Vaiśya and Sûdra. (See Yājñavalkya Achârâdhyâya Verse 10, also Ch. IV). The Āśramas *i. e.* the paths of life are four *viz* : The *Brahmacharya* or the life of a celibate student. see Yājñ. Āchâra. 32–50. *Gârhashthya* or the life of a householder, after marriage; the *Wânâprastha*, the life of a hermit, and the *Sannyâsa* or the life of an ascetic.

2. Ch. XVII. 2,4

The Author mentions the duties to be performed by these when so appointed

Yājñavalkya, Verse 186

Without detriment to one's own *Dharma*, whatever customary law there may be, should also be carefully observed as also the duties imposed by the king.

5

**Mitākṣharâ:**—Duties arising under any *custom*<sup>1</sup> such as the preservation of the pasture for cow, and of water, and the management of temples and the like, should also be carefully observed without (however) infringing the duties prescribed by the *S'ruti* and the *Smṛtis*. Similarly, the king, should also enforce, **nijadharmâvirodhenaiva yaḥ sāmāyiko dharmah**, such customary rules only as are not inconsistent with one's own *dharma*, e. g. 'meals should be provided for all travellers,' or the rule that "the horses and the like shall not be carried to the "dominions of the enemy."

10

15

Vîramitrodaya

Thus having been appointed, what should be their duty? So the Author says

Yājñavalkya, Verse 186

**Yaḥ sāmāyiko**, 'whatever customary', i. e. in the form of the pasturing of cows, the preservation of temples etc. and by reason of the agreement the duties resulting from the King's ordinances caused by the cowherds etc. such also as, 'the horses and the like should not be taken over into 'the enemy's circle', and such as, 'in my kingdom, it should be so arranged 'that guests should not be without having a meal', and the like commandments issued by the king by his own desire, that too should be preserved i. e. looked after, by the *Brāhmaṇas* who have been appointed with the direction 'may you preserve our own laws'. By the use of the word *tu*, 'however', the Author excludes such customary rule as is opposed to one's laws.

20

25

30

By the use of the word *api*, 'also', is included obligatory compacts stated in this text of **Brhaspati**<sup>2</sup>: "A compact formed among villagers,

1. *Samaya* may either mean a compact, agreement, or a custom or usage,—which is nothing but a course of conduct followed by a tacit agreement.

2. Ch. XVII. 2.

- “companies (of artizans), and associations (which) is ( called ) an agree-  
ment—such ( an agreement ) must be observed both in times of  
“distress and for acts of piety also”, and in addition to the one establish-  
ed by the King or his officers. By the use of the word *cha*, ‘as also’, the  
5 Author includes what is authorised by the King. (186).

## Śûlapâṇi

## Yājñavalkya, Verse 186

- The rule which has been fixed by a compact which is not in conflict  
with one’s own *Dharma*, as also that made by the king, that also must be  
10 observed. So also *Bṛhaspati*: “Without detriment to established rules  
“whatever royal command has been issued, that itself must be followed  
“under the king’s orders” (186).

Having thus stated that a ‘Customary rule,’ should be observed,  
the Author mentions a penalty for its infringement.

## 15 Yājñavalkya, Verse 187

He who embezzles the property of a *gana*, as also he who violates  
their usage, the king should deprive such a one of all his effects and banish  
him from his realm.

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- Mitâkṣharâ:**—Yah, *he*, moreover, who misappropriates the property  
of a *gana* i. e. property pertaining to any guild or  
20 Penalty for violat- association of villagers, *saṃvit*, a customary rule, is  
ing a customary Rule. a compact, either made by an association or by  
the king. He who *laṅghayet*, violates, i. e. transgresses these; of such a  
man, the whole property should be taken away, and the king, *vipravâs-*  
25 *ayet*, should banish, i. e. expel him, *svarâṣṭhrât*, from his realm. This  
penalty, moreover, should be administered in cases of aggravated  
offences or the like.

- In the case of petty offences, however, any of the four penalties.  
*viz.* banishment, or a fine of four *suvarṇas*, six *nishkas*, or a hundred  
30 silver coins, may be fixed by regard to the caste and the capacity ( of  
the offender ) as propounded by *Manu*<sup>1</sup>: “If a man belonging to a cor-  
poration inhabiting a village or a district, after solemnly swearing

“to a compact, break it through avarice, (the king) shall banish him  
 “from his realm (219). And having imprisoned such a breaker of a  
 “compact, he shall compel him to pay, four *survarṇas*, six *niṣṭhkas*, and  
 “one hundred silver (coins) (220)’”.

**Vîramitrodaya**

The Author states the penalty for a transgression of such a compact

**Yājñavalkya, Verse 187**

The meaning is that in the case of an infringement, the King should  
 deprive him of the entirety of his property and expel him. Here in the  
 interest of brevity of the composition should be understood as the  
 statement of the penalty for one taking away the property of the  
*gana* (association). 10

This penalty, moreover, is to be observed in the case of an aggra-  
 vated form of offence. In the case of a petty offence, however, any  
 one of the penalties mentioned by *Manu*’ may be fixed by regard to  
 the caste, capacity and the like viz.: “If a man belonging to a corpora-  
 “tion inhabiting a village or a district, after solemnly swearing to a com-  
 “pact, break it through avarice, the king shall banish him from his realm,  
 “(219). And having imprisoned such a breaker of a compact, he shall  
 “compel him to pay, four *swarnas*, six *niṣṭhkas*, and one hundred silver  
 “coins (220)’” (187). 15 20

**Sûlapâṇi**

**Yājñavalkya, Verse 187**

He who embezzles the common property of an association, as also one  
 who transgresses the terms of a compact, such a one should be deprived of  
 his entire property, and the King should expel him from the kingdom (187) 25

Thus they should act, the Author says

**Yājñavalkya, Verse 188 (1)**

The directions given by the advisers of the association should be ob-  
 served by all. 30

**Mitākṣharâ:**—Among the members, those who are competent to  
 advise as to the interests of the Associations, the directions given by  
 these should be followed by others who are incorporated as members.

Otherwise there is penalty; so the Author says

**Yājñavalkya, Verse 188 (2)**

There, he who acts contrary, shall be compelled to pay the first amercement.

- 5 **Mitâkṣharâ**:—He, however, from among the members, who acts obstructively to the directions of one who advises as to the interests of the Association—such a man—must indeed be punished by the king with the first amercement.

**Vîramitrodaya**

- 10 A rule established by a village association or the like must not be transgressed, as is the case with a rule fixed by the king; so the Author says

**Yājñavalkya, Verse 188**

- 15 Those who declare something for the benefit of the public such as *e.g.* the construction of a bridge etc. must be obeyed by all in regard to the advise of these declared in this manner. He, moreover, who in such a case acts contrary *i. e.* is opposed, shall be compelled to pay the penalty for the first amercement (188).

**Śûlapâṇi**

**Yājñavalkya, Verse 188**

- 20 The members of an association, such as the village guilds, &c. should follow the directions of the advisers of the association, be they two or three. He, moreover, who acts contrary to it should be compelled to pay the first amercement (188).

- 25 How should the king in this manner behave towards the members of an Association? So the Author says

**Yājñavalkya, Verse 189**

- Those assembled for the affairs of the Association, let the king dismiss, when their business is finished, after honouring them with gifts, honour, and expressions of civility.

- 30 **Mitâkṣharâ**:—Such members of the Association as may have approached the king for a purpose of the association, the king should dismiss after pleasing them by means of gifts, honour, and expressions of civilities, after they have finished their business.

**Vīramitrodaya**

In regard to those who execute the behests of these, the Author states the duty of the king

**Yājñavalkya, Verse 189**

Those who have come to him in connection with a business in the interest of an association, after the completion of their business, the king should favour all of them with gifts, cordial reception and honours, and then dismiss (189).

5

**Śūlapâṇi**

**Yājñavalkya, Verse 189**

Those who have arrived in connection with the business of an Association the king should honour with presents, honours and cordial reception (189).

10

The Author mentions a rule for one who appropriates what is given to the Association

**Yājñavalkya, Verse 190**

Whatever a man who is sent for the business of an Association receives, let him deliver it. He should be compelled to pay eleven-fold, if he does not himself deliver.

15

**Mitākṣharā:**—He who, when deputed to wait upon the king on a business of the Association, whatever he receives, such as gold, dress &c., all that he must offer unsaked to the Committee of the Association. Otherwise, he shall be made to pay a fine equal to eleven times the property obtained (by him).

20

**Vīramitrodaya**

When all do not go near the King for the business of the association, but only one deputed by these all, then how can there be the honouring of all? So the Author says

**Yājñavalkya, Verse 190**

When any one is deputed for a business in the interests of the association, whatever he obtains from the king, that he should distribute among all. When he does not so make over, then he should be compelled by the king to pay elevenfold of what was given. For the idea is that the honour done to the one was itself the honour for all (190).

25

30

**Śūlapâṇi**

**Yājñavalkya, Verse 190**

One who has been deputed for the business of the association, should bring and tender whatever money he receives. If he does not give, he should be compelled to pay the same eleven times (190).

30

The members of the advising body should be of a particular description. So the Author says

**Yājñavalkya, Verse 191**

5 <sup>1</sup>Men knowing Dharma, pure, un-avaricious, should be commissioned to consider the business. The directions of these,—the advisers of the general body,—must be executed.

16 **Mitākṣharâ:—**Dharmajñâ, *men knowing the Dharma*, as laid down in the *S'ruti* and the *Smrtis*, pure internally and externally, un-avaricious for any pecuniary gain, should be commissioned as members of the deliberative assembly. Their directions must be executed by others. This rule is again repeated as an indication of (special) regard (therefor.).

**Vîramitrodaya**

**Yājñavalkya, Verse 191**

15 Those well-versed in the rules of the *Śrauta* and *Smârta* performances, possessing internal and external purity, devoid of avariciousness, (thoughtful of the interests of the association) in their transactions, such should be invested by the king. The meaning is that the non-observance of the advise of these benefactors of the association necessarily leading to punishment, their words should be followed by all (191).

**Śûlpâṇi**

**Yājñavalkya, Verse 191**

20 Versed in the import of the Vedas, pure in monetary affairs, not avaricious, should be the advisers of the association in regard to their transactions. The opinion of these who give sound advise should be followed. The repetition again of this text is with the object of mentioning  
25 special acquisitions such as the knowledge of the vedas, etc. (191).

Now, with a view to extend the rules laid down for the Scholars in three Vedas, to *S'renis* etc., the Author says

**Yājñavalkya, Verse 192**

30 **This is the rule for the associations of *S'renis*, *Naigamas*, *Pâkhandis*, and *Ganas*. The king should preserve their peculiarities, and conserve their rules of old.**

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**Mitākṣharâ:—***S'renis* or bodies of artisans are those who subsist by the manufacture of the same commodity. *Naigamas*, such as the

1. These are the same as referred to in Verse 188 above.



Pâsupatas and others, are those who accept<sup>1</sup> the authority of the *Vedas* (simply) as composed by an *Āpta*. The *Pākhaṇḍins*, such as *Nagnas*<sup>2</sup>, *Saṅgatas*, etc., are those who do not even admit the authority of the *Vedas*. A *Gana* is a body of men living by the same profession, such as the soldiers, and the like. **Eṣhām**, for these four varieties of men, this is the rule *i. e.* as laid down *viz.*, “Without<sup>3</sup> detriment to one’s own “*Dharma* etc.” Moreover, let the king preserve their peculiar rules of conduct, and also conserve their hereditary craft.

Here ends the Chapter on the **Transgression of a Compact**.

#### Vīramitrodaya

The Author extends the law laid down for the *Traividyas*, to guilds etc.

#### Yājñavalkya, Verse 192

The combination of people maintaining themselves by (the sale of) one kind of merchandise is called the *Śreni*<sup>4</sup>, *Naigamāḥ*, the citizens, *Pākhaṇḍinaḥ* not accepting the *Vedas* as authoritative; *Ganaḥ* the guild of persons pursuing one profession such as the manufacturer of arms etc. *i. e.* the rule stated (in verse 186) above *viz.* “without detriment to “one’s own *dharma* &c.” By the use of the word *api*, ‘also’, are included the king’s officers.

In connection with the subject, the Author states the duty of the king in regard to these. He should preserve their rules as established of old. By the first *cha*, ‘and,’ are included the *Brāhmaṇas* spoken of before. By the second *cha* is added that he should fix rules for those for whom no rules exist (192).

Thus in the commentary of Yājñavalkya ends the Chapter on the **Transgression of a Compact**.

#### Sûalpâṇi

#### Yājñavalkya, Verse 192

*Śrenayāḥ*, such as the picture makers; *naigamān*, tradesmen, and various other citizens. *Pākhaṇḍaḥ*, *i. e.* apostate from asceticism. *Ganaḥ*, such as an association of *Brāhmaṇas*. Of these also, this very same, *i. e.* as stated above, is the rule. The king should preserve their peculiarities, and conserve the rules as established as of old (192).

Thus ends the Chapter on the **Transgression of a Compact**.

1. According to the tradition, the *Vedas* are the direct revelations of the Divine Word made to the seers who simply transmitted what they saw. There are some schools of thinkers, who do not accept this origin of the *Vedas*, but maintain that they are the compositions of revered sages. They accept the authority of the *Vedas*, not as a Divine Word revealed and transmitted through the seers, but simply as a work of high authority entitled to respect and weight, as having been composed by men of vast learning and accomplishment.

2. Varieties of *Buddha yatis*. These do not accept the authority of the *Vedas* at all. 3. *i. e.* Yājñ : II. 186. 4. See Verse 30 above pp. 746-747.

## CHAPTER XVI

## On the Non-payment of Wages.

Now begins the chapter called the non-payment of Wages, a title of law. Its characteristics have been stated by Nârada<sup>1</sup>: "A series of  
 5 "rules ( will be ) stated ( next ) for the payment and non-payment of  
 "wages of labourers. It is termed 'Non-payment of Wages' a title  
 "of law." The meaning of this ( is this ) : The chapter of law wherein  
 the rules of payment and non-payment of wages of the labourers have  
 been stated (*viz.*) in the stanzas following, is known as the chapter on  
 10 the ' Non-payment of Wages.'

There the Author mentions<sup>2</sup> ( a rule as to ) a decision

## Yājñavalkya, Verse 193

One who having received his wages, abandons the work, must pay  
 twice. If none is received, he shall be made to pay an equal amount. The  
 15 implements shall be preserved by the servants.

Mitākṣharâ:—One, by whom the wages had been received, if he abandon  
*i. e.* do not perform the work which he had undertaken, should pay  
 twice the amount of wages to the owner. When, however, he abandons  
 a task which he had agreed to do, when he had not received any  
 20 wages, then he should be made to pay an equal amount of as much as  
 was fixed as wages, and not a double.

Or, ( the passage may be interpreted<sup>2</sup> thus ) : he shall be forcibly  
 compelled to perform his work, after payment to him of the wages  
 promised; as directed by the following text of Nârada<sup>3</sup>: " One, who  
 25 "does not perform a work after having agreed to do it, should be  
 "forcibly compelled to do it, after paying him his wages."

The rule as to wages also, has been stated by the same Sage<sup>4</sup>: " Let  
 "the master, for whom work is performed, pay wages to the servants  
 "hired ( by him ) according to their agreement, at the beginning, at the  
 30 "middle, or at the end, as may have been settled between them."

1. Ch. VI. 1.

2. Vijñāneśvara proposes this interpretation of the text, as an alternative course suggested by the text of Nârada.

3. Ch. VI. 5.

4. Ch. VI. 2.

The servants also must preserve to the best of their ability implements of husbandry, such as the hide, and the rope of the plough, and like others: otherwise there would not be any ploughing etc.

Vīramitrodaya

"A series of rules are stated in connection with the 5  
"payment and non-payment of wages of labourers. That is termed  
"Non-payment of wages '—a title of law', thus stated in this text of  
Nārada<sup>1</sup> the Author treats of the title of law known as 'the Non-pay-  
"ment of wages.'

Yājñavalkya, Verse 193

10

*Gṛhitavetanah*, 'One by whom wages had been received,' such a  
labourer having undertaken, *karma tyajan*, as also a contractor, if 'he  
abandon the work,' *samam*, 'an equal amount', i. e. equal to the  
amount of wages settled, such amount he 'should be compelled to pay',  
*dāpyah*, by the king. And under compulsion he should be made to 15  
perform the work after paying him the wages, as stated by Nārada<sup>2</sup>:  
"One who does not perform the work after having agreed to do it,  
"should be forcibly compelled to perform after paying him his wages." This  
for him who after having commenced, does not (continue to) perform.

Where there is no commencement, however, the rule is stated by 20  
Manu<sup>3</sup>: "A labourer, who without being ill, out of arrogance does  
"not perform the work as agreed to, shall be fined eight *Kṛṣṇālas*, and  
"no wages shall be paid to him."

By the word 'abandons', the penalty has been stated, where the  
abandonment of the work is of his own making: otherwise, however, 25  
"if he abandons on account of a fault of the owner, he should get for as  
"much as he has performed", the rule thus stated by Nārada should be  
observed.

The labourer also should preserve the implements of the owner such  
as, the whip, the plough etc. The meaning is that if it is not properly 30  
looked after and preserved the lost article should be restored to the  
owner. On whatever occasion any particular wage has been agreed  
upon between the owner and the labourer that kind of wages on that  
occasion should be paid. This is clear and therefore, may be over-  
looked. (193).

35

## Sūlapāṇi

## Yājñavalkya, Verse 193

One who has accepted wages for the performance of a work, if he abandons that work shall pay double the wages. If the wages have not been received he may be made to pay equal. *Bhṛtyaiḥ*, 'by the servants', *i.e.* *Bhṛtakaiḥ i. e.* 'servants on wages.' The implements such as the plough, bridle etc. should be preserved (193).

The Author mentions a rule as to one who causes a work to be performed without determining the wages

## 10 Yājñavalkya, Verse 194

He, however, should be made to pay by the rule of the land a tenth part of the (proceeds of) trade, cattle, or crop, who without settling the wages, causes work to be done.

**Mitākṣharā** :—That master, however, *i.e.*, a grocer, an owner of cows, or an agriculturist, who even without clearly settling the wages, causes work to be done by a hired servant, whatever (profits) may be obtained from that work, *i.e.* from the trade, cattle, or agriculture, the tenth portion of that should be caused to be paid to the hired servant, **Mahikṣhitā**, *by the ruler of the land, i. e.* by the king.

## 20 Vīramitrodaya

When the labourer is working without any wages being determined what should be paid to the labourer? So the Author says

## Yājñavalkya, Verse 194

That master, however, who causes work to be performed such as trade and the like without the wages being determined, such a one should be made by the king to pay to the labourer a tenth part of the profit of trade, cattle, or agriculture. This, moreover, is with reference to a cultivator of the soil, vide the text of **Brhaspati** *viz.* "A third or a fifth shall a cultivator of the soil take as his share. One who is given food and clothing shall take a fifth of the plough." A third share in the absence of food or clothing. (194).

## S'ūlapāṇi

## Yājñavalkya, Verse 194

He, moreover, who causes work to be done even without determining the wages, such a one should be made to pay by the king a tenth part of the income from trade, cattle, and harvest (194).

The Author mentions a rule for one who does something without an order

Yājñavalkya, Verse 195

When one disregards the place and the time, as also where one otherwise causes a reduction in profits, in such a case, the will of the master ( shall prevail ); but more shall be paid if more be made. 5

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**Mitākṣharā:**—A hired servant, however, who does not sell a commodity at the proper time<sup>1</sup>, or in a proper place, and thus disregards these through insolence or the like; or one who at the same time or place brings in less profit than what would have been reaped by an extensive sale ( of the merchandise ), in the case of such a servant, the will of the master shall prevail in the matter of payment of wages; *i.e.* as much may he wish, so much should he pay, and not the entire wages. 10

When, however, more profits are made by reason of a special knowledge as to time and place, then an amount exceeding that fixed before, should be paid by the master to the labourer. 15

Vīramitrodaya

When the owner suffers a loss in the profit on account of the fault of the labourer the Author mentions the diminution in the wages

Yājñavalkya, Verse 195

That labourer, however, who transgresses the time and the place appropriate for trade or cultivation and does not make the sale, cultivation &c. is guilty of transgression, as also he who otherwise makes a profit by spending too much of the master's property; *tatra*, for such, *i.e.* in regard to such a labourer *swāminah*, 'of the master', in regard to the payment of wages, *chhandah*, "will", *i.e.* option. The meaning is as much as the master wishes, so much should he pay, and not the entirety of the wages. 20 25

1. The meaning is this : though he see a proper time and place for the sale of the commodity, if the factor, through insolence or the like cause, do not sell it; or if he accept less profit, thinking that the time and place would cause him much trouble, let the master pay him what wages he pleases, not the full hire. Colebrooke. Digest.

When, moreover, by reason of his special knowledge of the place and the season the labourer makes a greater profit, then more wages should be paid in addition to the tenth mentioned in the rule. By the first use of the word *cha* is included the special, particular etc. about the purchaser, and by the second use of the word *cha* the loss in the original capital (195).

### Śûlapâṇi

#### Yājñavalkya, Verse 195

He, however, who carries the load, etc., beyond the limit of the region other than the one which has been fixed, or does extra work beyond the fixed time, or performs more work than the nature of that fixed, in such cases it is at the option of the owner. In the case of more, however, more must necessarily be paid. For less, less; and hence also the option (195).

The Author mentions a rule as to the payment of wages for a task accomplished by several workmen

#### Yājñavalkya, Verse 196

As much work a man does, so much will be his wages; if it cannot be accomplished by both, the wages should be paid for the work done according to the agreement.

Mitākṣharâ:—When, moreover, even a single task for which the wages have been fixed, (and the performance of) which was (undertaken and) commenced, but which, on account of illness or any other impediment was found to be impossible to be accomplished even by both—by the use of the word ‘even’ (is implied) “even by many”—*i. e.* if it could be finished, then **yo yâvat karma karoti**, as much work a labourer does, **tâvat**, so much, *i. e.* proportionately to the work done by him, as determined upon by an arbitrator, should be paid to him as his **vetanam**, wages, and not an equal amount. It should not be supposed that no payment may be made, on the ground that there was no agreement for payment of wages for the several parts of the work.

If, however, the work be accomplished by both; *i. e.* be finished, then as much as was agreed upon *i. e.* stipulated for, so much should be paid to both; and not the entire amount of wages to each, nor should the payment be according to the work after determining it.

**Viramitrodaya**

The Author states a rule in regard to work to be performed by several labourers

**Yājñavalkya, Verse 196**

When one ( piece of ) work is completed by being performed by two or more contributing more or less labour, then by regard to the less or more labour of each the wages should be distributed among them, when it cannot be accomplished by two or more. The meaning of the word *api* is that when it is not accomplished on account of the fault of the second labourer. If the work is accomplished the contract should be completed as agreed upon.

The wages agreed upon to be paid for a particular performance are to be paid only on the completion of the work, and the wages are not to be paid for only a part performed. The meaning of the substance is that the wages are not to be paid distributively to each individual labourer, but are to be paid collectively in a single lot to all together or by dividing it among them (196).

**Sūlapāṇi**

**Yājñavalkya, Verse 196**

He, who performs as much work, his wages should be paid by regard to that work; if that work cannot be accomplished by both. If, however, it can be accomplished, and has been finished, wages should be paid as agreed upon (196).

The Author mentions a rule regarding a Soldier and a Carrier

**Yājñavalkya, Verse 197**

A Carrier shall be compelled to make good a vessel which has perished except it be by (the act of) God or the king : One who creates an obstruction at the time of starting shall be made to pay twice the (amount of) wages.

**Mitākṣharā:**—A vessel regarding which no calamity has arisen owing to ( the act of ) God or the king; if such a vessel be destroyed by a carrier through his folly then he should be made to pay for such a vessel according to the loss ( caused ). **Nārada** says<sup>1</sup> the same: “ If a vessel be damaged on account of the fault of the Carrier, he shall be compelled to make good whatever loss may have been caused, excepting such as may be due to an Act of God or the king.”



He, moreover, who having before undertaken the service of carrying one who intended to start on an auspicious day for a marriage or other similar purpose, creates an impediment at the time of starting by saying at that time that he would not do the work, then he shall be fined double the amount of the wages fixed, since an obstruction was raised to a highly auspicious undertaking.

Śûlapâṇi

Yājñavalkya, Verse 197

With the exception of anything due to the (act of) king or God, if through the fault of the carrier any goods or property of the trader such as saffron, etc. perish, then the carrier entrusted with its transport should be made to pay. One, moreover, who creates an impediment at the time of starting out (on a journey) shall be made to pay twice the amount of the wages (197).

Yājñavalkya, Verse 198

(If he declines) after setting out, he shall be fined a seventh part; a fourth if (he desert) on the way; he shall forfeit the entire amount of wages if (he declines) in the midway, so also one who causes a work to be abandoned.

Mitâkṣharâ:—Moreover, *prakrânte*, after setting out, i. e. after a start had (once) been made, he who gives up a task undertaken by himself,—such a one—should be compelled to pay a seventh part of the wages agreed upon.

It may be said: indeed in this very connection by the text<sup>1</sup> “one who creates an obstruction at the time of starting &c.”

An objection. the payment of double the amount of wages has just before been stated; and now, a seventh part; thus there is a contradiction. The answer to this is: that for a man

The answer. who abandons a work at a time when another servant may be procured, the seventh part (is the fine); while for one who gives up at the auspicious moment of starting itself, a fine of double the amount of wages (is prescribed); thus there is no contradiction. He, moreover, who abandons *pathi*, on the way, i. e. after a start was made and the journey had once been commenced,—such a one should be fined a fourth part of the wages. He, moreover, who deserts in the midway shall be fined the entire amount of wages.

1. Yājñ. II. 197 (above).

He, however, **tyājakaḥ**, who causes the work to be abandoned, i. e. when the master compels a servant to stop work, when the latter was not giving it up, such a one also (i.e. the master) shall be compelled to pay to the servant the seventh and other portions respectively, regard being had to the place (where compulsion was caused) as stated before.

5

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This, rule moreover, regards one who has not had any disease or a like calamity, *vide* the text of **Manu**<sup>1</sup>: “A hired servant who, not being “ ill, does not perform, through insolence, the work as agreed upon, “ shall be fined eight *Kṛṣṇālas*<sup>2</sup>, and no wages shall be paid to him.”

When, moreover, after the disappearance of the disease or the like cause, he makes good his undertaking, taking into calculation the lapsed days, then indeed he gets his wages, *vide* the text of **Manu**<sup>3</sup>: “ If, however one who was ill, after recovery, performs his work “ according to the original agreement, he shall indeed receive his “ wages even after ( the lapse of ) a very long time.”

10

15

When, however, one after he is cured of the disease, being perfectly at ease, through idleness or like other cause does not do the work commenced, even to a small extent, nor gets it finished by another, to such a one no wages shall be paid. As says **Manu**<sup>4</sup>: “ But “ if he, whether sick or well, does not ( perform or ) cause to be per- “ formed ( by others ) his work according to his agreement, the wages “ for that work shall not be given to him, even if ( it be only ) slightly “incomplete.”

20

Here ends the Chapter on the Non-payment of Wages.

### Vīramitrodaya

25

It has been stated above that “ the implements shall be preserved “by the servants.” There, for not preserving or for a prejudicial performance, the Author mentions the penalty

### Yājñavalkya, Verses 197, 198

Without the act of king or God where a vessel has perished owing to the ignorance of the carrier then the carrier must be compelled to pay.

30

1. Ch. VIII. 215.

2. The Guṇja berry. i. e. of gold, silver or copper according as the case may be ( *Medhātithi* ). ‘ of gold ’ ( *Kullūka* ).

3. Ch. VIII. 216.

4. Ch. VIII. 217.

By the use of the word, "tu", the Author excludes what has perished by the act of king or God.

On a day fixed for starting for a marriage or a like purpose the labourer who raises obstructions, and when another labourer is not available, shall be made to pay double the amount of wages by compulsion *i.e.* by beating and any other mode causing extreme pain. By the use of the word "eva" are excluded the performance of work at any other time. Then by the use of the word "cha" are included those who cause considerable delay in half the way (197).

10 When a work has been commenced and another labourer is available one leaving the work should be made to pay a seventh part; on the way *i. e.* in midway in one's own country, one abandoning, ( shall pay ) a fourth part; and one abandoning at half the journey, the whole of the wages should be made to pay. He also who by mischievous counsel causes a workman to give up work, such a one also should be compelled to pay double the amount of wages.

The words 'api' and 'cha' are for excluding any option. In the matter of a cumulative punishment **Manu**<sup>1</sup> thus: "If ill, when he reco-  
vers, he should perform as originally agreed upon; such a one will  
20 "certainly receive his wages even after a very long time." The meaning is that the days of interruption should be counted and the work should be completed within these days. If, however, when he is in perfect health, but does not perform work through idleness or the like, then he does not get the wages, *vide* the text of **Manu**<sup>2</sup>: " But  
25 "when whether sick or well he does not cause to be performed the work, "the wages for that work shall not be given to him although it is short "by a small portion." This is the substance.

Here ends the Chapter on Non-payment of Wages.

### Śūlapâṇi

30

#### Yājñavalkya, Verse 198

At the time of commencing a journey he who even at the (starting) place gives up work, the person abandoning shall be compelled to pay a seventh part of the wages. The rest is clear. (198).

## CHAPTER XVII.

### On Gambling and Betting on Animals.

Now commences the Chapter of law called "Gambling and Betting on Animals." Its characteristics have been mentioned by Nārada<sup>1</sup>:  
 "Dishonest gambling with dice, small slices of leather, little staves  
 "of ivory, or like others and also betting on birds, form a title of  
 "law called Gambling and Betting on Animals." *Akṣhaḥ* means dice.  
*Bradhma* is a small piece of leather, *S'alāka*—small staves of ivory  
 &c. made long and squared. By the use of the term *Ādya*, 'Or like  
 other,' are included other instruments of enjoyment, such as the  
 play having the four components<sup>2</sup> of an army division, including the  
 elephant, the horse, the chariot, and the like. Gambling *i. e.* play-  
 ing by means of these inanimate things is preceded by a bet. Simi-  
 larly that play by means of birds such as a cock, a pigeon and the  
 like—and by the use of the word 'and', *cha*, wrestlers, rams, buffalos  
 etc.—which is initiated by a bet, both of these give rise to a title of  
 law called 'Gambling and Betting on Animals.' That has been  
 stated by Manu<sup>3</sup>: "That which is arranged by ( the use of ) inanimate  
 "things, is called among men 'Gambling' ( *Dyāta* ); when, however,  
 "the play is enjoyed by means of animate beings, it should be known  
 "as Betting ( *Samāhvayaḥ* )"

The Author mentions the ( scale of ) remuneration of a keeper  
 of the Gambling Hall

### Yājñavalkya, Verse 199

In a bet, when the wager is a hundred ( fold ) the keeper of a gambl-  
 ing house shall take five per cent from a gamester<sup>4</sup>, and ten per cent from  
 the others.

Mitākṣharā:—The stake determined by mutual agreement of the  
 gamblers is called a 'bet', *glahaḥ*. In such a bet one who has ( stipulat-  
 ed to have ) a hundred in reference to it, *i. e.* an increase which is

1. Ch. XVI. 1.

2. An army is generally described as having four parts *viz*: the elephant, the horse, the chariot and the foot. *Chaturāṅga* is a kind of chess in which these four parts are represented.

3. Ch. VIII. 223.

4. *i. e.* the Keeper of a gambling house.

- of a higher proportion than a hundred-fold is an increase by hundred fold. From such a gamester, **Sabhikah**, the keeper of the hall, may take five per cent for his own maintenance. A hundred in which five *paṇas* is the increase is a 'five per cent', **pañchakam śatam**. The affix
- 5 *Kan* (in *S'atakam*) is used under the rule<sup>1</sup>: "These affixes (mentioned in Pāṇini V. I. upto, rule 47) have also the sense of 'an interest, or rent, or a profit, or a tax, or a bribe given thereby' or in 'that.'" The meaning is that he should take a twentieth part (of the gains) of the winner of the bet.
- 10 He to whom belongs the house for the residence of gamesters, is a **Sabhikah**, keeper of the gambling house. One who makes provision for all the instruments of gambling such as dice etc., and maintains himself with the amount received therefrom is called a *Sabhâpati*. From any other, moreover, *i. e.* from a gamester who has not laid a
- 15 wager upto a hundred (fold), **daśakam śatam**, ten per cent, he should take a tenth part of the amount won. This is the import.

## Sûlapâṇi

## Yājñavalkya, Verse 199

- 20 At the time of the gambling, etc. where a small increment is recovered from the gambler, from that per hundred from the clever gambler, the officer of the gambling house should take five per cent. Where it has not been taken, then ten per cent from the profit (199).

What should be done by a keeper who has thus been provided for? So the Author says

- 25 **Yājñavalkya, Verse 200**  
PAGE 126.\*

He, being well protected, shall pay a portion to the king as fixed. He shall recover the amount of the wager, and pay the winner; and being ever patient shall give a true decision,

- 30 **Mitākṣharâ** :—The Officer of the gambling house, for whom provision has thus been made **saḥ**, he, being protected from rogues and gamesters by the king—shall pay to the king a portion as agreed upon. Similarly, he should recover the amount of the wages, *i. e.* should recover it from the losing party, by accepting a pledge or by

1. Pāṇini V. I. 47. तदस्मिन्वृत्त्यायलभे.

arrest etc. And having recovered that amount, he the keeper should pay it to the winner *i. e.* the successful party. Also, being (ever) patient, he should always declare a true decision to the gamblers. That has been stated by **Nārada**<sup>1</sup>: “The master of the gaming-house shall arrange the game, and pay the stakes won therein.”

5

### Śûlapâṇi

#### Yājñavalkya, Verse 200

The keeper of the house when properly protected by the king shall pay to the king a portion as arranged, being always patient he shall take from the gambler, the amount won. And to the winner also he should pay the amount sticking to the truth. **Brhaspati**<sup>2</sup> states a special rule: “One defeated in a secret game; or ignorant (of the rules) or (defeated) by (the use of) false dice or deceit, though acquainted with the game shall be released; and one who has lost his entire wealth in a game shall not be compelled to give the whole of it” (200).

10

15

When, however, the keeper is not able to make (the party) pay, the king should cause it to be paid. So the Author says

#### Yājñavalkya, Verse 201

That which has been won publicly in an assembly of gamesters, in a gaming house having a keeper, where the (fixed) portion has been received by the king, he shall compel the amount to be paid, but not otherwise.

20

**Mitākṣharâ** :—**Prasiddhe**, *publicly*, and not in secret, in an assembly of gamesters having a keeper of a gaming house, and in the presence of the officer of gaming appointed by the king, and when the king's portion had been paid by the keeper, the king shall compel a dishonest gamester to pay the amount of the bet won regarding which there is no difference of opinion. **Anyathâ**, *otherwise*, a bet won in secret, without a keeper and where the king's portion has not been paid, he shall not cause to be paid to winners.

25

### Śûlapâṇi

#### Yājñavalkya, Verse 201

Where the king has received his own portion, he shall compel the amount to be paid which has been won publicly in the house of gamsters in the presence of the game-keeper and not otherwise (201).

30

The Author mentions the means for a decision when there is a dispute as to success or defeat

**Yājñavalkya, Verse 202 (1)**

**The Judges of the disputes (about gambling) as also the witnesses shall be (the gamesters) themselves**

**Mitākṣharâ** :—**Drashtārāḥ**, the judges, of gambling should be **ta eva**, themselves, i. e. the gamesters, i. e. should be appointed by the king. There the rule<sup>1</sup> that 'they should be accomplished by learning and study' &c. does not hold. **Sākṣhināścha**, the witnesses also, in a bet should be selected from the gamblers themselves. The prohibitive rule<sup>2</sup> given in "A woman, a minor, an old man, a rogue &c." does not apply here.

The Author mentions a penalty by way of prohibiting gambling in certain cases

**Yājñavalkya, Verses 202 (2)**

**Persons gambling with false dice or other instruments shall be branded and banished by the king.**

**Mitākṣharâ** :—Those who play with false dice or other instruments similarly prepared, for causing a deception *e. g.* by charmed jewels, charms, or medicinal preparations and the like, these the king shall brand with a dog's or other mark, and banish from the kingdom. A special rule has been mentioned by **Nārada**<sup>3</sup> as to banishment: "The king shall banish from the<sup>4</sup> kingdom wicked men who play with false dice, after a wreath of dice has been hung round their necks; for, that is the punishment ordained for them." Moreover, those texts of **Manu**<sup>5</sup> which prohibit gambling, *e. g.* "Whoever, either gambles himself or bets or causes it (by others), all those the king shall punish corporally, as also those *S'ūdras* who assume the distinctive marks of the twice-born" and others, even these should be understood to apply to gambling with false dice, as also to gambling where there is no keeper nor the gambling officer of the State.

1. See Yājñ. II. 2 p. 3 above.

2. i. e. in Yājñ. II. 70 p. 851 above.

3. Ch. XVI. 6.

4. Dr. Jolly's Edition gives a different reading *viz.* निर्हिन्दृतमण्डलात् "shall drive out of the gaming house."

5. Ch. IX. 224.



Śūlapâni

Yājñavalkya, Verse 202

The judges of disputes regarding gambling as also the witnesses shall be (the gamesters) themselves. Persons gambling with false dice, or fraudulent gamblers should be branded by the king and banished. 5  
As says Nârada<sup>1</sup>: "The king shall banish from the kingdom wicked men " who play with false dice, after a wreath of dice hung round their necks. " For that is the punishment ordained for them" (202).

Yājñavalkya, Verse 203 (1)

Gambling should be ordained under the supervision of a single officer, 10  
with a view to ( use it as a means of ) the detection of thieves.

Mitâkṣharâ:—Moreover, the gambling as discussed above should be ordained under a single supervision *i. e.* one where the mouthpiece or the chief is one. The meaning is that it should be organised by the king under the supervision of an officer of the State. Taskarajñâna- 15  
kârâṇât, with a view to the detection of thieves. Having kept in view the object of detecting thieves, as gamblers generally hail from those who amass wealth by theft; and so it should be placed under the supervision of one ( officer ) with a view to the detection of thieves.

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The Author mentions a rule with a view to extend the laws of 20  
gambling to betting on animals

Yājñavalkya, Verse 203 (2)

This very law should be understood to apply in the case of betting by 25  
means of animate beings.

Mitâkṣharâ:—The law as to gambling as has been laid down 25  
above<sup>2</sup>: " In a bet when the wager is a hundred ( fold ) &c." that very law should be understood, prâṇidyûte, in the case of betting with animate beings, *i. e.* that which is made by means of wrestlers, rams, buffalos and the like, and which is called a Samâhṡvayah.

Here ends the Chapter called Gambling and Betting on Animals. 30

Vîramitrodaya

'Now the Chapter of the law called "Gambling and Betting on "Animals," and as stated in the text of Manu<sup>3</sup> viz. " That which is "arranged by ( the use of ) inanimate things is called in this world "gambling, dyûta; that, however, which is arranged by means of animate 35  
"beings should be known as betting on animals, samâhṡvayah, and divided "into two parts," the author begins

1. Ch. XVI. 6

2. Yājñ. II. 199.

3. Ch. VIII. 223.

## Yājñavalkya, Verses 199-203

The stake determined by the mutual agreement of the gamblers is called a "bet", *glahah*; in such a bet, in a hundred *i. e.* by the measure of a hundred and increased, the keeper of the hall, *Sabhikah*,  
 5 *i. e.* the officer presiding the gambling may take five per hundred *i. e.* for a hundred of gold etc. five of gold etc., from the clever and successful gambler who makes the bet. From any other, when the profit is less than a hundred, he should take ten per cent; that is the meaning. By the use of the word *tu* is excluded the recovery of five  
 10 per cent from one who is defeated.

The keeper of the gambling house who has been protected by the king by the arrangement for his subsistence and by the warding-off of attacks from others should pay to the king as fixed *i. e.* in the order as fixed, a portion from the amount of his acquisitions ( 199 ).

15 He should give the won bets to the winner. Afterwards at the place of the defeat he should himself recover *i. e.* take, after recovering it. Truth-telling and patience, one who has these two. The meaning is ( that ) he should give a correct decision ( 200 ).

If, however, the keeper of the house is not able to recover, then it  
 20 should be compelled by the king to be paid; so the Author says '*prāptē*' etc., 'recovered etc.' where it has been obtained by the king publicly *i. e.* not covertly in an assembly of the gamblers *i. e.* in the company of the betters. In a place with a keeper attached to the house the king should compel it to be paid to the keeper. Or it should be construed  
 25 thus: *sthāne* "at the place" *i. e.* at the gambling place, the king should compel the keeper of the house to be paid. Otherwise, *i. e.* where the king has not received a share, or in a secret assembly of the gamblers, or at a place not presided over by a keeper of the house, what has been won, the king need not compel to be paid ( 201 ).

30 In transactions relating to gambling, the judges *i. e.* the persons entitled to give decisions, as well as the witnesses shall be ( the gamesters ). By the use of the word *eva* are excluded the absence of a fault indicated in the text<sup>1</sup> "women, minors, aged persons, gamblers  
 "etc." Those who gamble with false dice etc. *i. e.* involving deceit or  
 35 with fraudulent motives *i. e.* with an intention to deceive, as also by means of gems, charms, or medicaments, such persons should be branded by the king and exiled. So says Nārada<sup>2</sup>: "The king shall banish  
 "from the kingdom wicked men who play with false dice, after a wreath  
 "of dice has been hung around their necks; for, that is the punishment  
 "ordained for them." Thus in the text of Manu<sup>3</sup>: "Whoever himself  
 40 "engages, or causes others to engage, in gambling or betting on animals,  
 "all these, the king shall punish corporally, and also those Sūdras who

1. See Yājñ. II. 70, 71 p. 851. 2. Ch. XVI. 6. 3. Ch. IX. 224.

“assume the distinctive marks of the twice-born”, and of others are to be regarded as having a reference to those gamblers only who use false dice ( 202 ).

Where there is only one officer of the king viz. the keeper of the ( gambling ) house as the mouth-piece *i. e.* the principal officer, such gambling should be arranged with the object of finding out the thieves.

The law as to gambling stated in the text<sup>1</sup> “in a bet when the “wager is of hundred etc.,” the Author extends to betting on animals—*Eṣha eveti*, ‘this same etc.’ ( By means of ) living beings such as wrestlers, rams etc., in a gambling which is to be carried on, known as the *samāhwayaḥ i. e.* betting on animals, the very law as has been stated above, is to be understood. This is the meaning.

Says Brhaspati<sup>2</sup>: “When birds, rams, deer or other ( animals ) “are employed to fight against one another, after a wager has been “laid, it is called betting on animals.”

“When any one is defeated in a prize-fight between two animals, “the wager which has been laid there, shall be paid by the owner ( of “the defeated animal). A wager shall be made in public, false gamblers “shall be punished.” Nārada<sup>3</sup>: “If a man arranges a gambling which “has not been authorized by the king, such a one shall not get the stake, “and moreover shall incur a penalty. That which has been jokingly “made or which has not been reported to the king, there also he shall “not get his stake, and he will also incur a penalty.”

Viṣṇu<sup>4</sup>: “Those who use false dice in gaming shall have their “hands lopped off. Those who resort to fraudulent practices in gaming “(shall lose ) the fore-finger and the thumb.” ( 199-203 ).

Thus in the commentary on Yājñavalkya ends  
the Chapter on Gambling and Betting on Animals.

### Śūlapāṇi

#### Yājñavalkya, Verse 203

This gambling should be caused to be presided over by a principal officer with a view to get information about thieves. This same procedure should be understood to be in the case of betting with animals called *Samāhwayaḥ*. When gambling is carried on by means of animals such as the ram, the cock, etc. with a stake on, that is known as gambling with animals. Although gambling has been forbidden by Manu<sup>5</sup> in the text: “Whoever either gambles himself or bets or causes it (by others), all those “the king shall punish corporally, as also those Śūdras who assume the “distinctive marks of the twice-born,” still if a beginning is made any-how, this rule of the law has been stated.

Thus ends the Chapter on Gambling and Betting on Animals.

1. Yājñ. II. 199. 2. Ch. XXVI. 3-5. 3. Ch. XVII. 7. 4. Ch. V. 134-35, 5. Ch. IX. 224.

## CHAPTER XVIII.

## Of Abuse.

- Now the Author introduces the law of Abuse. Its definition has been stated by Nârada<sup>1</sup>: “ Abusive language, couched in offensive and
- 5 “ violent terms, regarding the native country, caste, family, and so forth ( of a man ), are termed ‘ Abuse’.” Offensive and violent language about a ( man’s ) country &c.; violent talk is an *Ākrośa*; *Nyāṅga* is a disrespectful talk. Language which savours of both these, and which is also abusive and thus causes dismay, is called ‘ Abuse.’
- 10 There, *e. g.* ‘ the natives of *Gauḍa* are fond of quarelling’, is ( an instance of ) an abuse regarding a country; ‘ The *Vipras* are an extremely covetous people’, is ( an instance of ) an abuse regarding a caste; ‘ the members of the *Viśvāmītra* family are cruel in their acts’, is ( an instance of ) an abuse regarding a family. By the use of the term
- 15 *Ādi*, ‘ and so forth ’, is also included violent language regarding learned men, or men versed in crafts and the like, used by means of abusing learning, craft &c.

- Of that, a three-fold division has been laid down by Nârada *viz.* *Nishṭhura* &c., with a view to ( be of help in the ) discrimination as to
- 20 the punishments. The characteristics of those divisions also have been stated by the same Author<sup>2</sup>: “ That, again, is divided into three species, “ according as it is *Nishṭhura* ( cruel ), *Āśīla* ( indecent ), or *Tīvra* ( sharp ). “ The punishment for each increases in severity respectively according to the nature of the insult offered ( 2 ). Abuse combined with
- 25 “ reproaches should be regarded as *Nishṭhura* ( cruel ); abuse couched “ in insulting language is *Āśīla* ( indecent ); the learned call an “ abuse *Tīvra* ( sharp ), by which a man is charged with an offence “ causing expulsion from caste ( 3 ).” “ Fy upon you fool ! you are “ a rascal ”, is ( an instance of ) an abuse combined with reproaches.
- 30 Here insulting means ungentlemanly language ; censurable—*e. g.* ( imputing ) intercourse with a sister etc.—language savouring of such words is called an indecent abuse ( *Āśīlam* ). And violent language imputing an offence of a heinous nature *e. g.* “ Thou art a drunkard ”, is an instance of an abuse called *Tīvra* ( sharp ).

Of these, the Author mentions the punishment for a *Niṣṭhura* abuse towards a man of the same *Varna*

Yājñavalkya, Verse 204

He, who, by true, untrue or, ironical statements ridicules persons as wanting in limbs, or an organ of sense, or suffering from a disease, shall be fined thirteen and a half *panas*.

5

**Mitākṣharā** :—**Nyūnāṅgaḥ**, wanting in a limb, i.e. deprived of a hand or a foot etc. **Nyūnendriyaḥ**, wanting in an organ, i.e. being without an eye, or an ear etc. **Rogiṇaḥ**, suffering from a disease, e. g. a skin disease, or leprosy etc. Of these whether by true, untrue, or by an ironical praise e. g. when one man says about another that “this man who is devoid (of the use) of both the eyes, is blind”, that is (an instance of) a true statement. Where however he says, “This man having eyes, is blind”, it is (an instance of) an untrue statement. Where the statement is, “you look beautiful even in your deformity”, that is (an instance of) an ironical praise—if a man ridicules, **kṣhepam karoti** i. e. reviles or abuses them, such a man should be fined a half and thirteen *Panas*.

10

15

As for the text of **Manu**:<sup>1</sup> “He who calls another man ‘one-eyed, ‘lame’ or the like, even if it be in accordance with facts, shall be “punished with a fine not<sup>2</sup> less than a *Kārṣhāpana*,” that has reference to one who belongs to a *Varna* notorious for extremely bad behaviour.

20

When, however, sons etc. abuse mothers or the like, then these should be fined a hundred, (as) has been said by the same **sage**<sup>3</sup> : “He “who defames his mother, his father, his wife, his brother, his son, or “his teacher, and he who gives not the way to his preceptor, shall be “compelled to pay one hundred *panas*.” This rule, moreover, is to be observed in the case of the mother and other elderly (and respectable) persons who are guilty, and in the case of a wife who is innocent.

25

Śūlapāṇi

Yājñavalkya, Verse 204

If one makes a statement of abuse regarding persons defective in organs or defective as from suffering in diseases, either by a true statement or by a false statement, or in any other manner, then he shall be punished half by thirteen *panas*. **Nārada**<sup>4</sup> states the characteristics of abuse (‘same as at page 1246 ll. 2-6 above) (204).

30

35

1. Ch. VIII. 274.

2. i. e. With a minimum of a *Kārṣhāpana*.

3. Ch. VIII. 275.

4. Ch. XV. 1.

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The Author states the penalty for an *Aślîla* (indecent) abuse  
Yājñavalkya, Verse 205

The king shall compel a man to pay a fine of Twenty-five *panas* who abuses another saying "I shall have intercourse with your mother or sister."

- 5 Mitākṣharâ:—One abusing thus: "I shall have intercourse with your 'sister or mother', the king shall compel to pay a fine of twenty-five *panas* *i. e.* which consists of a twenty plus five *panas*.

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Sûlapâṇi

Yājñavalkya, Verse 205

- 10 *Pañchaviṃśatikam*, 'Twenty-five, *i. e.* which consists, of twenty-five *panas*. The rest is plain. In some places the reading is 'or similarly a mother' (205).

- 15 Having thus stated the rules for men of equal merits and *Varṇa*, the Author proceeds with a view to declare the law regarding men of varying merits

Yājñavalkya, Verse 206 (1)

(For the abuse of a man) of an inferior (status) (the fine is) half; and for (the abuse) of others' wives or superiors, (the fine is) two-fold.

- 20 Mitākṣharâ :—Adhameṣhu, (In the case of an abuse) of men of inferior (status), *i. e.* relatively to the person abusing by regard to the inferiority in (the mode of) living and such other qualities, the fine is half. In the present context, the full fine being twenty-five *panas* as stated in the previous clause, a fine equal to the half of that *i. e.* twelve and a half should be understood. As for an abuse regarding 'others'
- 25 wives,' a uniform fine of double *i. e.* twice twenty-five *i. e.* fifty *panas* should be understood. Similarly, for an abuse of 'Superiors' *i. e.* of those who are relatively superior, in learning and conduct, to the person (abusing), the fine shall also be fifty *panas*.

The Author states the rule for determining the penalty for mutual abuse between men of different *Varṇas* such as the *Mūrdhâvasikta* and others

**Yājñavalkya, Verse 206 (2)**

The determination of the penalty should be made by regard to the superiority or inferiority of the *Varṇa* and *Jāti*.

**Mitākṣharā**:—*Varṇâḥ*, i.e. a *Brâhmana* &c; *Jâtis* i.e. the *Mūrdhâvasikta* and others. *Varṇâḥ* and *jâtayah* (joined together make up the compound) *Varṇa-jâtayah*. 'Superior, and inferior' (joined together make up the compound) 'Superior and inferior.' *Varṇajâtayah* which are 'superior and inferior' (when joined together make up the compound expression) '*Varṇas* and *jâtis* which are superior and inferior.' In the case of an abuse being mutually committed by these **varṇajâtyuttarâdharaiḥ**, *varṇas* and *jâtis* which are superior and inferior, **dandasya prañayanam**, the determination of the penalty, i. e. the inference, should be understood to be made by reference to the maximum penalty.

It appears that by particularly specifying 'Superiors and inferiors,' the determination of the penalty is to be made also by reference to the relative superiority or inferiority (of the parties), e. g.<sup>1</sup> for abusing a *Mūrdhâvasikta* who is inferior to a *Brâhmana*, but superior to a *Kṣatriya*, a *Brâhmana* deserves a penalty which would be slightly above fifty *panas*, which is the penalty for the abuse of a *Kṣatriya* viz. seventy-five *panas*. A *Kṣatriya* also for abusing him<sup>2</sup> becomes amenable to a fine which would be slightly less than one hundred *panas* which is the penalty for an abuse of a *Brâhmana* viz. Seventy-five *panas*. A *Mūrdhâvasikta* also deserves the same fine for an abuse of (either of) these two. In the case of an abuse mutually between a *Mūrdhâvasikta* and an *Ambaṣṭha* the same penalties shall be understood respectively as would be the case in an abuse mutually between a *Brâhmana* and a *Kṣatriya*. Similar punishments should be inferred in other cases also.

1. In the instances given, the Author has illustrated the rule by taking the causes of abuse by the lower and higher tribes.

2. i. e. *Mūrdhâvasikta*; see Ch. IV. Âchârâdhyâya of Yājñavalkya.



## Śûlapâṇi

## Yâjñavalkya, Verse 206

Of equal *varṇas* by regard to the person indulging in the abuse; and among those of low qualities than the accused, half of twenty-five should be taken as the fine. In regard to an abuse of others' wives and of the preceptors or the like, double of that *i. e.* fifty in quantity.

*Varṇâh*, 'classes', such as the *Brâhmanas* and the like. *Jâtis*, 'castes,' such as the *Mûrdhâbhiṣikta* etc. In regard to these also, for an abuse by the higher of an inferior or by the lower of the superior, the administration of punishment should be made. The rest is clear (206).

Having thus stated the penalties in the case of all the *Varṇas* the Author mentions a penalty for an abuse among the *Varṇas* again but by reference to the *Pratiloma*<sup>1</sup> and *Anuloma* order.

## Yâjñavalkya, Verse 207

In the case of the abuse of one of a superior class, the fine is two-fold and three-fold (respectively), and of one of a lower class, it is to be reduced in the ratio of a half (respectively).

**Mitâkṣharâ:—Apawâdâh**, abuse, *i. e.* vilification. Abuses by persons belonging to an inferior class are **prâtilomyâpawâdâh**, abuses of one of a superior class, **teṣhu**, in these cases, *e. g.* for a *Kṣhatrîya* or a *Vaiśya* abusing a *Brâhmana*, the fines should be understood respectively to be double of that mentioned in the foregoing text<sup>2</sup> laying down a double *i. e.* of fifty *paṇas*; so that double *i. e.* a hundred, and a treble *i. e.* a hundred and fifty *paṇas* (shall be understood).

In the case of an abuse of a *Brâhmana* by a *S'ûdra*, there is either corporal punishment or cutting off of the tongue, as says **Manu**<sup>3</sup>: "A *Kṣhatrîya* having defamed a *Brâhmana* shall be fined one hundred "( *Paṇas* ); a *Vaiśya*, one hundred and fifty or two hundred, while a "*S'ûdra* shall make himself amenable for corporal punishment."

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In the cases also of a *Vaiśya* and a *S'ûdra* who are lower down a *Kṣhatrîya* by one or more than one class (respectively), by a parity of reasoning, the penalty for abusing a *Kṣhatrîya* should be understood to be a hundred and a hundred and fifty (*paṇas*). For a *S'ûdra* abusing a *Vaiśya*, a hundred (*paṇas*, shall be the fine).

1. 'in descending and ascending order.' See Yâjñ. Âchârâ. Ch. IV.

2. *i. e.* in Yâjñ. II. 206 ( 1 ) above p. 1249.

3. Ch. VIII. 267.

In the cases of abuse of the lower classes *e. g.* in an abuse of a *Kṣatriya*, a *Vaiśya* or a *S'ûdra* by a *Brâhmana*, of that, *tasmât*, *i. e.* of the penalty for a *Kṣatriya* abusing a *Brâhmana viz:* of a hundred (*panas*), a reduction of a half should be made in the case of each class respectively, and the remainder *i. e.* fifty, twenty-five, and twelve and a half (*panas*), should be the fine, respectively, for a *Brâhmana*. That has been stated by *Manu*<sup>1</sup>: "A *Brâhmana* shall be fined fifty (*panas*) for defaming a *Kṣatriya*; in (the case of the "abuse of) a *Vaiśya*, the fine shall be twenty-five (*panas*); in (the "case of) a *S'ûdra* twelve." In the case of an abuse by a *Kṣatriya* of a *Vaiśya* or a *S'ûdra* the fines respectively shall be fifty, and twenty-five (*panas*). And in an abuse by a *Vaiśya* of a *S'ûdra* a (fine of) fifty (*panas*). Thus the law should be understood, *vide* the text of *Gautama*<sup>2</sup>: "The fine in the (cases) of a *Kṣatriya* and a *Vaiśya* shall be "similar as in the case of a *Brâhmana* and a *Kṣatriya* (respectively)," and also under the text of *Manu*<sup>3</sup>: "A *Vaiśya* and a *S'ûdra* must be punished "exactly in the same manner according to their respective castes."

#### Sûlapâṇi

#### Yājñavalkya, Verse 207

The meaning is that for an abuse of the *Brâhmana* by a *Kṣatriya*, a hundred, and by a *Vaiśya* of a hundred together with a half. Obviously by making it fourfold two hundred is that for a *Sûdra*.

*Manu*<sup>1</sup> states a penalty for an abuse of an inferior order: "A *Brâhmana* shall be fined fifty *panas* for defaming a *Kṣatriya*, and a half of fifty for (defaming) a *Vaiśya*, and for (defaming) a *Sûdra* twelve is the penalty (207).

The Author mentions again a rule regarding a *Niṣṭhura* abuse

#### Yājñavalkya, Verse 208

For an abuse threatening injury to the arm, neck, eye, or thigh, the fine shall be a hundred; and a half of it in (the case of) the foot, nose, ear, the hand, or the like.

*Mitākṣharâ*:—For an injury to the arm &c. each by a threatening abuse *i. e.* for threatening by words *e. g.* in the form "I shall lop off "your arm &c." *Satyah*, a hundred, *i. e.* a fine limited by a hundred shall be understood. In the case of a verbal threat of an injury to the foot, nose, ear, hand, or the like,—by the use of the word *Âdi* 'or the like', (are also included) the hips and the like—*tadardhikah*, half of that, *i. e.* half of that *i. e.* a fifty *panas*, should be understood.

1. Ch. VIII. 268,

2. Ch. XII. 14,

3. Ch. VIII. 277.

Śūlapâṇi

Yājñavalkya, Verse 208

After a threat "I shall lop off your arm," followed by an injury, the penalty is of the extent of one hundred. In regard to the foot etc.;  
5 its half, i. e. fifty (208).

Yājñavalkya, Verse 209

When, however, a feeble person speaks like that, he shall be fined ten *panas*; similarly, one able should be asked to furnish security for the safety of him.

10 Mitākṣharâ :—Moreover, when he who is reduced in strength on account of fever or a like cause, threatens another with the words "I shall lop off your arms and other limbs", or the like, he shall be fined ten *panas*.

15 When, however, one has capacity and threatens, as before, another person who has been reduced in strength, he should be compelled to furnish security for the safety of the weak person for the period after the (infliction of the) fine of a hundred &c., mentioned before.

Śūlapâṇi

Yājñavalkya, Verse 209

20 One, however, who is unable to cause the injury, and speaks in this manner, shall be fined ten *panas*. One, however, who is capable and speaks in this way, after being punished with the aforestated one hundred, shall be made to give security for the protection of the person threatened (209).

The Author mentions a penalty in the case of a *Tivra* abuse

25 Yājñavalkya, Verse 210

In the case of an abuse involving degradation from caste the fine is that for a middle *Sāhasa*. For (an abuse) imputing a secondary sin, however, he shall be compelled to pay the fine for the lowest *Sāhasa*.

30 Mitākṣharâ :—In the case of men belonging to the *Varnas*, an abuse of them involving their degradation, e.g. the offence of Brāhmicide &c., the fine shall be as that for a middle *Sāhasa*. For an abuse, however, imputing the commission of a secondary sin, e.g. 'Thou art a cow-killer' or the like, he shall be fined as for the lowest *Sāhasa*.

Śūlapâṇi

Yājñavalkya, Verse 210

35 For an accusation of a Brāhmaṇa in the form "you are a Brāhmicide" and the like by a Kṣatriya, the punishment to be administered is the middle amercement. And for an accusation for killing a cow etc. he should be made to pay the first amercement (210),

### Yājñavalkya, Verse 211

For an abuse of a *Brāhmaṇa* learned in the three Vedas, the king, or the gods, the fine shall be (as for) the highest Sāhasa; the middling, (for an abuse) of the castes or the *Pāgas*; and the lowest (for an abuse) of the village or the country.

5

Mitākṣharā:—Moreover, *Brāhmaṇas* learned in the three Vedas *i. e.* accomplished by learning the Vedas. For an abuse of these, of the

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kings, and of the gods, the fine shall be (as for) the highest Sāhasa. Moreover, for an abuse of the *Pāgas i. e.* associations of the castes such as the *Brāhmaṇa*, the *Mūrdhāvasikta* and others, the fine shall be (as for) a middling Sāhasa. In the case of an abuse of a village or the country, the fine shall be understood to be (as for) the lowest Sāhasa each.

10

Here ends the Title of law called 'Abuse.'

### Vīramitrodāya

15

Now the chapter of law called 'Abuse' defined by Nārada<sup>1</sup>: "Abusive language, caused in offensive and violent terms, regarding "the native country, caste, family etc., (of a person) is termed Abuse." The Author discusses that

### Yājñavalkya, Verses 204-211

20

There, however, an abuse is of three sorts. So says Bṛhaspati<sup>2</sup>: "Offensive language or defamation regarding one's country, village, "family or the like which is not a fact that, is known as the abuse of the "first degree. Referring (in terms of contempt) to a man's sister or "mother, or charging with a minor sin, is termed abuse of a middling sort "by those learned in the law. Charging a man with taking forbidden food "or drinks, or taxing him with a heinous sin is termed abuse of the highest "degree, as also maliciously exposing his weakest points."

25

*Dravyam* 'fact' *i. e.* the thing without it, in short false; thus a false assertion as to a sin or a defect in a limb or inferiority of family, an assertion of this nature is lowest; a false assertion about an inferior sin is a middling abuse, and a false assertion as to a heinous sin is the highest kind of abuse. This is the meaning.

30

There, in regard to the first, the punishment is stated. A true assertion *e. g.* 'you are blind;' an untrue assertion of a similar character in the case of one not blind; ironical statement *i. e.* an apparent praise resulting in a censure, as for example, in the case of a

35

blind person etc. the statement 'you are lotus-eyed', or the like. If by these statements one reviles another in an ironical manner in regard to a defect in a limb or an organ, or being affected by a disease or the like, then he shall be punished with thirteen and a half *i. e.* a half and twelve *pañas*. This moreover is (a rule) in regard to those of the same caste. That has been declared by Br̥haspati<sup>2</sup>: "When two persons abuse each other, their punishment if they are equal in caste and merits has been approved in the Śāstra to be thirteen and half *pañas*; in the case of equals the penalty is equal; of one who is inferior, the same is double, and for a superior, half has been ordained for a mutual abuse."

As regards abuse concerning a mother etc. Manu<sup>3</sup> states a special rule: "He who defames the mother, the father, the wife, the brother, the son or the teacher, and also he who does not give way to the preceptor shall be compelled to pay one-hundred *pañas*." This according to Mitākṣharā<sup>4</sup> is applicable in the case of a mother etc. when they are guilty, and in the case of a wife when she is innocent (204).

'I shall have sexual intercourse with your sister or mother and have been having the enjoyment', one abusing thus and causing pain to one equal in caste, the king shall compel to pay the penalty of twenty-five *pañas*. The use of the word *vā*, 'or', is made indifferently; thereby 'I shall have intercourse with your daughter or wife even' and the like (form of abuse) also is included. The word *ha* is used simply for filling up the line (205).

The penalty of half by thirteen *pañas* or twenty-five *pañas* which is mentioned above in the case of equals shall be half in the case of inferiors when abused; in the case of others' wives or superiors, it shall be double of that stated for equals.

The Author mentions regarding mutual abuse in the case of persons who are relatively higher and inferior in caste, merit, and class also. Dande 'punishment' etc. *varṇāḥ* 'classes', such as the Br̥hmaṇa etc; *jātis*, 'castes', such as the Mūrdhāvasikta and others, *uttarādharāḥ*, 'superior and inferior', *i. e.* higher and lower. In the case of mutual abuse between these the determination of the punishment should be specially made; as for example for a Br̥hmaṇa for

1. See note above.

2. Oh. XX. 5.

3. Ch. VIII. 276.

4. The print of the Viramitrodaya is thus 'मन्वादेर्निरपराधत्वे जायायाः सापराधत्वे चैतदिति निताक्षरा। apparently a slip as-is confirmed by the Mitākṣharā where the reading is सापराधेषु मन्वादिषु etc.

abusing a *Mūrdhāvasikta* who is inferior to a *Brāhmaṇa* and is superior to a *Kṣatriya* shall pay half as much more the penalty as is laid down for the abuse of a *Kṣatriya*, and less by a quarter of the penalty for the abuse of a *Brāhmaṇa* ( 206 ).

‘Half in the case of inferiors’ as has been stated above; as if mentioning this as an illustration, the Author mentions a special rule in the case of persons still lower and much higher *prātilomyeti* etc. In the case of an abuse of one of a superior class by one of those who are lower than the lowest, the punishments are respectively four-fold etc. In the case of an abuse of an inferior class by one of the highest class respectively of the lower ones, the punishments shall respectively be half, half of the half, and in the descending order. Thus such punishment as is prescribed in the case of an abuse of a *Brāhmaṇa* by a *Brāhmaṇa*, quadruple of that shall be for a *Sūdra*, triple of it for a *Vaiśya*, and double of it for a *Kṣatriya* shall be the punishment for the abuse of the *Brāhmaṇa*. The punishment which is prescribed for the abuse of a *Brāhmaṇa* by a *Brāhmaṇa*, the half of that shall be for the abuse of a *Kṣatriya*, quarter of it for the abuse of a *Vaiśya*, and the eight part for abusing a *Sūdra* shall be the punishment for a *Brāhmaṇa*. Thus should be understood elsewhere ( 207 ).

For an abusive threat ‘I shall cut off your arm’, or of a like nature, and threatening the destruction of an eye etc., the penalty shall be hundred *paṇas*, and for an abusive threat of injury to the foot etc., half of a hundred shall be the punishment in the case of persons equal in caste. By the use of the word *ādi*, ‘et cetera’, is included hips and other minor organs ( 208 ).

This, moreover, to cut off the arms etc., is in regard to one who is able; one, however, who is weak and indulges in such abuse shall be punished ten *paṇas*. In the case of one who is very strong and indulges in the threat of an injury should be compelled to give security for the protection of the whole and for the avoidance of the arm-cutting etc. By the use of the word *tu* is excluded one who is mightier still. By the use of the word *tathā*, i. e., ‘also’, is included the statement that in the absence of a security he should be kept under restraint by the king. Here also the more or less is to be determined by regard to the distinction of the best and the lowest (209).

The Author now mentions with regard to abusive threats of the first, middlemost and the lowest class. For an accusation involving

degradation such the offence of Brâhmicide or the like, for such a charge the penalty is as for the middle *sâhasa*. For an abuse, however, imputing the commission of a secondary sin, the penalty as for the lowest *sâhasa* should be imposed. That for the middle *sâhasa* has been  
 5 noted before. This, moreover, is with reference to persons of the same quality and the like. By regard to the distinction of the higher or lower class, more or less should be inferred (210).

For an abuse of the *Brâhmaṇas* learned in the three Vedas *i. e.* accomplished scholars in the three Vedas, as also for the defamation of the  
 10 king and of the gods also. Thus, by the use of the word *âdi*, 'etc.', is included the cutting of the trees etc. For an abusive language against a *Brâhmaṇa*, that for the highest *sâhasa*. For an abuse of the caste, the *pûgas* etc. *i. e.* the associations of the *Mûrdhâvasikta* and the like, as that for the middle *sâhasa*, and for an abuse of the village or the country,  
 15 the penalty for the first *sâhasa* shall be imposed. For an abuse of *Kṣatriyas* and the like, a double etc. should be understood. In regard to an abuse involving degradation *Manu*<sup>1</sup> says: "For a mutual abuse, "however, by a *Brâhmaṇa* or a *Kṣatriya* the punishment should be  
 "administered as ordained. On the *Brâhmaṇa* the lowest, and on the  
 20 "Kṣatriya the middlemost amercement."

In connection with the *Śûdras* *Bṛhaspati*<sup>2</sup> says: "For reviling "the *vipras* he is liable to have his tongue cut off."

So also "For one pronouncing their names and castes with  
 "malicious intent, a red-hot iron spike of ten fingers in length should  
 25 "be ordered in his mouth." This, however, appears to be in regard to excessive abuse actuated by habitual malice.

Here ends the Chapter called Abuse.

### Śûlapâṇi

#### Yājñavalkya, Verse 211

For those who indulge in an abuse of the learned in the three Vedas  
 30 and the like, the highest amercement is the penalty; of the *jâtis* such as the *Mûrdhâbhishikta* &c., of the association of tradesmen and the like, the middle amercement, and of the village or the country, the first amercement, shall be the punishment.

35 Thus ends the Chapter on verbal Abuse.

1. Ch. VIII. 277.

2. Not found in the published extracts of *Bṛhaspati*.



## CHAPTER XIX.

## Assault.

Now begins a chapter called Assault. Its characteristics have been stated by Nârada<sup>1</sup> : "Injuring the limbs of another with a hand, 'foot, weapon or otherwise, or defiling him with ashes or the like, is 5  
'termed Assault'. That injury *i. e.* striking and causing pain to another's limbs *i. e.* (also) to movable and immovable property, by means of the hand, foot, weapon or otherwise—by the use of the word 'otherwise' *Ādi i. e.* (also) by means of stones &c —; similarly that 10  
defilement by means of ashes—by the use of the word *Ādi* 'or the like', by means of dust, mud, fœces also—which causes mental pain on account of the (vile) touch; both these are known as 'Assault.'

That by means which an injury is caused is a *daṇḍa*, *i. e.* the body; a *pârushya i. e.* inimical behaviour by means of it towards movable property or the like, is called *Daṇḍa-pârushya* ( Assault ). 15

Having, moreover, stated its threefold division, distinguished by the raising of the hand &c., a second threefold division again has been stated by<sup>2</sup> the same Sage by regard to the threefold acts regarding articles of small, middling, or superior value : "There are three  
"species of that also as it may be either small, middling, or extreme, 20  
"according as it consists in the raising (of a hand or weapon) or in "an unexpected attack, or in striking a wound ( 5 ). Stealing articles "of small, middling, or superior value, is called the three *Sâhasas*;  
"there, the thorny weeds should be extirpated." 'An unexpected attack' *i. e.* striking one who has not the least warning (about it). 25  
Only three *Sâhasas i. e.* three kinds of *Sâhasas. i. e.* daring deeds *e. g.* Assaults.

Moreover, when abuse or assault has once commenced, whoever of the two contending parties, forbears, for such a one, not only that there is no punishment, but he is indeed to be respected. Similarly' 30  
for one who first began the quarrel, there shall be a higher punishment. Also when after the quarrel has commenced, he who follows up his attack is liable to be punished.

1. Ch. XV. 4,

2. Ch. XV. 5-6.

And when it is not possible to discriminate between the guilt of the two, the fine shall be equal. Moreover, in the case of an insult offered to the *Aryas* by the *S'vapachas* and the like, the Good<sup>1</sup> people themselves have authority to levy a fine; if they are unable, the king  
5 should indeed chastise them, and not (merely) receive a fine. Thus, the five rules of procedure have been mentioned<sup>2</sup> by the same Sage :

"For both kinds of these, a five-fold rule of procedure has been laid down: When, after an altercation has once commenced, and both have been excited to a high pitch, he who forbears is respected;  
10 "and he who pushes on (the quarrel) deserves punishment. He who is the first to offer an insult is decidedly a criminal; he who returns the insult is likewise culpable; but for him who began the quarrel, the punishment shall be heavier (9). When both parties are implicated equally, he of the two shall receive punishment who follows  
15 "up his attack, whether he was (originally) the aggressor or the defendant (10). When two parties have been guilty of insult, and both have commenced to quarrel at the same time, they shall suffer the same punishment, in case that no difference (in their respective culpability) becomes apparent (8). If a *S'vapâka*, *Ṣhaṇḍha*,  
20 "a *Chañḍâla*, cripple, one who maintains by killing (beings), an elephant-driver, a *Vrâtya*,<sup>3</sup> a slave, transgress their limit and offer an insult to the teacher,<sup>4</sup> preceptor, or the king, they shall instantly be punished corporally (11 and 12). Any one of the better class whom these persons offer an insult, may himself administer the  
25 "punishment. The king has<sup>4</sup> nothing to do with their punishment (13). For these people are the refuse of human society, and their property (likewise) savours of impurity. Therefore the king shall inflict corporal punishment upon them, and he must not (merely) punish them with a fine (14)."

1. The good men themselves shall punish them. But if they are unable, then the king shall chastise them and not merely remit with a fine. *Asahâya*.

2. Ch. XV. 7-14.

3. One deprived of the caste for the non-performance of the ceremony of initiation. These are again admitted into the caste by the performance of a rite known as the *Vrâtya-stoma*. It is also the descriptive name used in reference to the caste which originated from a *Sûdra* father and a *Kṣhatrîya* mother.

4. Dr. Jolly reads thus: *गुरोर्वाचार्यनिगेषु च* (11) *मर्षादातिक्रमे* &c. (12) "or one who treats a Guru or spiritual teacher with disregard" "should offend a superior &c" (12)

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Premising the necessity of establishing an assault of the character thus<sup>1</sup> described, the Author mentions the means of dealing out punishment when there is a doubt about it

### Yājñavalkya, Verse 212

In the case of an assault to which there were no witnesses, the point at issue should be determined by means of marks, by probabilities, by popular report, and the like, lest the mark should be counterfeited. 5

Mitākṣharā:—When, any one complains to the king thus, “I was ‘beaten by such a one in secret,” then *chiṇnaiḥ*, by means of marks, *i. e.* signs indicating colour &c., on the body, *yuktyā*, by probabilities, by regard to the relation of cause and effect, *âgamena*, popular report, *i. e.* from the talk among the people—by the use of the word *cha*, ‘and’ ‘the like,’ by an ordeal also—the determination should be made bearing in mind the possibility of a counterfeit mark. 10

### Vīramitrodāya

Now the Author begins the chapter on Assault. Its characteristics have been mentioned by Nārada<sup>2</sup>: “Injuring the limbs of another “with a hand, foot, weapon or otherwise or defiling him with ashes or “the like is termed assault.” By the use of the word *âdi*, ‘and the like’, is included the cutting of the trees etc. 15

There first, on a doubt arising whether one has committed the assault or not, the Author mentions the means of determining the same 20

### Yājñavalkya, Verse 212

For an attack for which there are no witnesses *i. e.* (one) made in secret, and when the assault was made with the feet and weapons, and a denial is set up, such a dispute should be decided *i. e.* determined, by means of marks such as scars etc. on the body; by probabilities taking into consideration the motive etc.; by knowledge *i. e.* by popular report. By the use of the word *cha*, ‘and’, by ordeals. *Kūṭa* etc. *i. e.*, by others than by counterfeit marks. By the use of the word *tu*, ‘however’, the Author excludes the imposition of punishment etc. for mere verbal accusation, such as ‘I was beaten by him’ (212). 25 30

1. There is a mistake in the print of the text at p. 131 l.i. for एव भूतदण्डम् &c. read एव भूतदण्ड etc. 2. Ch. XV. 4.

## Śûlapâṇi

## Yājñavalkya, Verse 212

- 5 Having assaulted another at a place devoid of witnesses and smearing one's body with blood, when one asserts "I have been beaten by him", there, for fear of counterfeit marks the decision is to be given by regard to unadulterated marks and also by the evidence of truthful people. Brhaspati<sup>1</sup> states the characteristics of an assault: "Injury by means of a staff, a stone, a club or ashes, mud or dust, or attacking with weapons, "is termed assault" (212).

- 10 Having thus determined the particular means, the Author mentions a special punishment

## Yājñavalkya, Verses 213 and 214

- 15 For throwing ashes, mud, or dust the punishment recorded is ten *panas*; and double that amount for attacking with an impurity, a heel, a spittle (213)

- 20 This if ( the offence be committed ) against one of an equal class. But ( it would be ) double ( if the offence be committed ) against another's wives, or against persons of higher orders; if, against persons of lower classes, a half of the fine; there shall be no fine for an offence committed through infatuation, drunkenness, or the like (214).

- 25 Mitâkṣharâ :—He who throws ashes, mud or dust at another should be compelled to pay a fine of ten *panas*. By impurity is also included tears, phlegm, nails, hair, ear-wax, rheum of the eyes, and leavings at the meals. Pârṣṇih, *heel*, the hind part of a foot. Nishthyûtam, *a spittle*, *i. e.* the water thrown out of the mouth. For an assault with these, a fine twice of that *i. e.* the fine mentioned before viz. (of) ten *i. e.* twenty *panas*, must be understood. Again, a special rule has been stated by Kâtyâyana in cases of Assaults with faeces &c: "It is declared to be four-fold, when the assault is committed  
30 "by ( means of throwing ) the vomit, or urine, or faeces or the like, on "the lower extremities; six-fold if thrown upon the middle extremity of the body; but eight-fold if upon the head." By the use of the term *Ādi*, 'or the like,' are included fat, semen, blood, the marrow of the bones, and flesh &c. (213).

- 35 The fine thus mentioned before should be understood in the case of persons of the same tribe. In the case of assaults on the

wives of others, it applies generally without differentiation. Also, (in the case of assaults) against persons of a higher order *i. e.* higher in learning or conduct as compared with (the actor) himself, a fine must be understood which would be double in amount of that mentioned before *i. e.* of ten *pañas* and also of twenty *pañas*. In the case of persons of a lower class *i. e.* inferior in learning &c. as compared with himself, a fine half in amount of that mentioned before *i. e.* five *pañas*, or ten *pañas* must be understood.

**Mohah**, *infatuation*, means mental aberration. **Madah**, *drunkenness*, is the particular condition (which is) produced by the drinking of intoxicating liquor. By the use of the word *A'di* the possession by a spirit &c. (also are included). When under the influence of these an assault is committed, no penalty shall be imposed even when the ashes &c. (actually) touch the body (214).

#### Vīramitrodaya

Now after having thus determined (the fact of) the assault as the next step, the Author states the penalties according to circumstances up to the end of the chapter

#### Yājñavalkya, Verses 213-14

For a bodily assault upon another such as by ashes, mud or dust, the penalty for the assailant shall be ten *pañas*. For an attack with an impurity such as tears etc., or with a heel *i. e.* the hind part of the leg, or with a spittle *i. e.* the excreta of the mouth, the penalty is double of ten *pañas* (213).

The penalty in this manner should be observed in the case of the equals in all the *varṇas*. For an attack on others' wives or upon members of the higher *varṇas*, in regard to an offence of this character, the punishment shall be double of that stated for the equals. In regard to a similar offence towards members of lower *varṇas*, half the penalty of that stated for the equals should be imposed. **Mohah**, 'infatuation', *i. e.* ignorance; **madah**, 'drunkenness', such as by liquor etc. By the use of the word *ādi*, 'or the like', is included arrogance. By these even, if assault is made with ashes etc., there is no punishment. By the use of the word *cha*, 'and', is indicated the addition of treble and quadruple punishments in the case of higher and higher degrees. It shall be four-fold when (the attack is committed) by means of urine, vomit, or fish or the like; six-fold, if on the middle part of the body; but eight-fold, if upon the head. The quadruple etc. is to be understood as of ten *pañas* (213-14).

## Śūlapāṇi

## Yājñavalkya, Verse 213-14

When the ashes etc. touch another's body the penalty is ten paṇas. For a touch of the impurities also the same doubled (213).

5

## Yājñavalkya, Verse 214

Similar is the penalty as characterised above in the case of persons of the same caste; in the case of others' wives or of persons of superior caste it is two-fold. For those of the lower caste, half. When it is done through mistake etc. (there is) no punishment (214).

10

The Author mentions a penalty in cases of assault by inferior persons (against superiors)

## Yājñavalkya, Verse 215

The limb of one who is himself not a *Brāhmaṇa*, which causes injury to a *Vipra*, must be cut off. When it is raised, the lowest amercement, (is laid down), and half of it in (the case of) a touch.

15

Mitākṣharā:—The limb of one who is (himself) not a *Brāhmaṇa*, *abrāhmaṇasya*, i. e. of a *Kṣatriya* or the like, viz. the hand, the foot etc. which causes injury to the *Brāhmaṇas*, that should be cut off. Of a *S'ūdra* causing injury to a *Kṣatriya* or a *Vaiśya* even, the punishment indeed is the cutting off of the limb: "With whatever limb a man of a lower class does injury to one of a higher class, even that limb of his should be cut off;" this is the command of *Manu*<sup>1</sup>. From the rule as to the cutting off of the limb of a *S'ūdra* for an offence against any one of the twice-born tribes, by a parity of reasoning, the same punishment would accrue to a *Vaiśya* causing any injury to a *Kṣatriya*.

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Udgīrṇe, when raised, i. e. when a weapon etc., is raised with a view to strike, the punishment for the first amercement must be understood. Of a *S'ūdra*, however, even for a raising (of the hand etc.), the punishment, indeed, is the cutting off of the hand etc., vide the text of *Manu*<sup>2</sup>: "For raising a hand or a stick, he deserves the punishment of having his hand cut off."

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Sparsane, for touching, a weapon etc. for raising it, however, *tadardhikah*, half of it, i. e. half the punishment for the lowest *Sāhasa*, must be understood. In cases of assaults by means of ashes etc. by a

*Kṣatriya* and a *Vaiśya*, the punishment should be determined by regard to the rule stated in the text<sup>1</sup>: “In cases of the abuse of one “of a superior class, the fine is two-fold, and three-fold.” Even, there, a *Sûdra* shall, indeed, have his hand cut off, *vide* the text of *Manu*<sup>2</sup>: “If out of arrogance he spits (on a superior), the king shall “cause both his lips to be cut off; if he urines (on him), the penis; “if he breaks wind (against him), the anus.”

Śûlapâṇi

Yājñavalkya, Verse 215

The hand etc. of a non-Brāhmaṇa causing injury to a Brāhmaṇa should be cut; for an attempt made, however, the first amercement; but for touching a weapon, as an attempt,—half (215).

Having thus stated the punishment for an offence in the case of persons of lower classes, the Author proceeds again in regard to a person of the same caste

Yājñavalkya, Verse 216

For holding up a hand or a foot, the punishment shall be ten and twenty *panas* (respectively). For threatening each other with a weapon, the punishment shall be the middle amercement for all.

*Mitākṣharâ*:—For raising a hand or a foot with the object of striking, the fine shall be understood respectively to be ten *panas* or twenty *panas*. For raising a weapon with the object of striking each other, in the case of the classes, the middle amercement shall be the fine.

Vîramitrodaya

Yājñavalkya, Verses 215-16

The limb of a *Kṣatriya* such as hand, foot etc. which causes injury to a Brāhmaṇa by beating etc. should be cut off. By the use of the word *cha*, ‘and,’ all the *Vaiśyas* and the *Sûdras* causing injury to *Kṣatriya*; and the limb of a *Sûdra*, causing injury to a *Vaiśya* are included. *Kena kena*, ‘by whom?’ *Vide* this text of *Manu*<sup>3</sup>: “With “whatever limb a man of a lower class does injury to one of a higher “class, even that limb of his should be cut off;” this is the command of *Manu*. By the reading of the word *tu*, ‘however’, is excluded the cutting off of the limb of a Brāhmaṇa.



*Udgūrṇe*, 'when raised', i. e. when uplifted for the purpose of an attack, in the case of a weapon etc. the penalty is as for the first *sāhasa*. For a mere touch of the weapon, however, by oneself for the purpose of raising it, the penalty is half of that for the first *sāhasa*. The first *sāhasa*, moreover, is for one other than a Śûdra. In connection with a Śûdra Manu<sup>1</sup> having observed: "for raising a hand or a stick, he deserves the punishment of having his hand cut off."

In the case of members of all the *varṇas*, for the offence of raising the hand mutually against each other, the punishment is ten *panas*. For an attack with the foot the punishment is assessed at twenty *panas*, and for raising a weapon, the punishment is of the middle *sāhasa*. By the first use of the word *tu*, 'however', is excluded the falling of the weapon, and by the second use of the word *tu*, is excluded the penalty stated in the case of unequal castes (215-16).

#### Śûlapâṇi

##### Yājñavalkya, Verse 216

For an attempt for an attack with the hands or the feet, the punishments respectively are ten and twenty *panas*; for an attempt with a weapon, the middling amercement (216).

##### Yājñavalkya, Verse 217

For pulling out the foot, the hair, the clothes or the hand (of another), ten *panas*; for causing pain by violently pulling a man caused to be tied in his clothes and trampling him under the foot, a hundred (*panas*) is the fine.

Mitâkṣharâ:—Moreover, he who catches hold of the foot, the hair, the clothes, or the hand, or any of these, and pulls them out, *ulluñchhati*, i. e. violently plucks them, such a one shall be fined ten *panas*. Causing pain, pulling, tying in a cloth and trampling under foot (all joined together, make up the compound expression) 'Causing pain, pulling, tying in a cloth and trampling under foot'; for doing that, a man shall be fined a hundred *panas*. The purport is this: He who after tying in a cloth, and violently pulling, tramples another under foot, such a man should be compelled to pay a hundred *panas*.

#### Śûlapâṇi

##### Yājñavalkya, Verse 217

For pulling up the leg etc. the punishment shall be ten *panas*. Injury by pulling and tying with a cloth these together make the conjunct compound, 'one who ties round by the upper cloth'; and after tightening pulls up with the foot, for him the penalty shall be one hundred *panas* (217).

### Yājñavalkya, Verse 218

The man causing pain without shedding blood by means of a stick or the like, shall be fined thirty-two *panas*; double (that) at the appearance of blood.

Mitākṣharâ:—Moreover, he, however, who strikes mildly with a piece of wood or mud so that no blood is shed, such a one shall be fined thirty-two *panas*. When, however, on account of hard beating, blood is shed, then he shall be fined twice thirty-two *i. e.* sixty-four *panas*. A special rule, moreover, has been pointed out by Manu<sup>1</sup> in the case of the breaking open of the skin, flesh &c.: "He who breaks the skin shall be fined a hundred, as also one who draws out blood. He who breaks the flesh, six *nishkas*, while he who breaks a bone shall be banished."

#### Śûlapâṇi

### Yājñavalkya, Verse 218

For severely attacking with a wood the punishment shall be thirty-two *panas* if blood does not appear. For its appearance, however, the penalty is double (218).

### Yājñavalkya, Verse 219

For breaking a hand, a foot, or a tooth, and for cutting an ear or nose, the fine shall be the middle (amercement); similarly for laying open a sore, and also for beating almost to death.

Mitākṣharâ:—Moreover, for breaking a hand, a foot, or a tooth, in each case; as also for cutting an ear or the nose, (in each case); for laying open a healed-up sore; and for beating in such a manner that the man becomes almost dead, the middle amercement shall be understood. Here, the similarity of acts should be ascertained by regard to the result of the act.

#### Śûlapâṇi

### Yājñavalkya, Verse 219

For breaking the hand, piercing the nose, opening up a healed scar, or for striking one who is almost dead, the penalty is the middle amercement (219).

### Yājñavalkya, Verse 220

For a restraint in respect of motion, eating, or speech; for an injury to the eye and the like; for a fracture of the neck, the arm, or the thigh, the middle amercement.

Mitākṣharâ:—Moreover, for restraining motion, eating, or speech, for an injury to the eye—and by the use of the term *Ādi*, to the

tongue also--; *kandharā* means the neck; an arm is wellknown. *sakthi* means the thigh; for fracturing each of these, the fine shall be, the middle amercement.

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### Śūlapāṇi

5

#### Yājñavalkya, Verse 220

For obstructing the movements, etc. piercing the eyes etc. or for breaking the neck and the like, the punishment shall be the middle amercement (220).

### Yājñavalkya, Verse 221 (1)

10

When several assault a single person, the fine for them shall be double of that already mentioned.

Mitākṣharā :—Moreover, when however, several ( people ) combining together break the limb of one ( man ), or do any other similar act, then whatever fine has been laid down for the particular offence, a fine double in amount of that must be understood in each case respectively. On account of the extreme aggravation of these offences, even in the cases of offences committed against persons of inferior classes, or of higher classes respectively, the reduction or increase is to be determined by reference to this very law of punishment in the order mentioned in regard to the offence of abuse and the offences enumerated thereafter, and laid down in regard to persons of the same class, *vide* the text :<sup>1</sup> “ Whatever punishment has been mentioned for the offence of abuse ( and the like ) committed against persons of superior or inferior classes respectively, the same penalty shall respectively be inflicted by the King in the offences of assault ( and the like ) also.”

25

### Vīramitrodaya

( For an assault ) on members of the same caste the Author states

#### Yājñavalkya, Verses 217-21 (1)

30

For pulling out *i. e.* pulling with a jerk the feet etc. of others the penalty is ten *paṇas*. For causing pain *i. e.* for causing injury by pressing one's foot against one who has been tightly tied by a cloth and pulled, the penalty is a hundred of the *paṇas* ( 217 ).

<sup>1</sup> Author not known. Bālabhāṭṭa assigns it to Manu. But it is not found in the available editions of Manu.

When a man assaults another with a wood etc. so that blood is not seen, he should be condemned to pay thirty-two paṇas; for the appearance of the blood, however, he should be made to pay double. In the case of breaking open of the skin etc. **Manu**<sup>1</sup> states a special rule: "He who breaks a skin shall be fined a hundred, as also one "who draws out blood. He who breaks the flesh six *nīṣkas*, while "banished shall he be who breaks the bone" (218).

For a wound of the three organs such as the hand and the rest each, for cutting of the nose, for opening up a healed scar, and for beating in such a manner that he would be as if dead, the penalty is the middle *sāhasa*. By the use of the word *tathā*, 'similarly', is included the cutting of the finger (219).

*Chesṭeti*, 'motion etc.', for causing a restraint in respect of motion, eating or speech or any of these, for piercing the tongue etc. as also for an injury to the neck, the arm or the thigh, for an injury to any of these, the punishment is the middle amercement. By the use of the word *ha*, 'and', is included the heal and the like (220).

Where many attack one, there the penalty which has been stated for one as an assailant, double of that is the penalty for the other. This is the meaning. Here the higher or lower punishment or the distinction of higher or lower is not to be observed [221 (1)].

### Yājñavalkya, Verse 221 (2)

**That which had been taken away during the scuffle shall be restored, and a fine double (in value) of that.**

**Mitākṣharâ** :—During the continuance of the scuffle whatever has been taken away by a party should be given back by him. Also a fine double the amount (in value) of the thing taken away must be paid as penalty for the deprivation.

### Vîramitrodāya

Moreover

### Yājñavalkya, Verse 221 (2)

During the continuance of a fight, what has been taken away by one as belonging to another should be returned by him to the other, and on that account a penalty of double the value of that as for taking it away should be taken by the king [221 (2)].

Śūlapāṇi

Yājñavalkya, Verse 221

For many combining together and beating one, the punishment shall be double of those stated. And in the scuffle whatever has been taken away from any one, that shall be given to him, and double of that should be given to the king as a penalty (221).

Yājñavalkya, Verse 222

He, who causes bodily injury, shall pay the expenses incidental thereto, and shall also pay the fine mentioned in regard to the particular assault.

10 Mitākṣharā :—Moreover, he who causes injury ( to another ) by beating, shall pay such expenses as may be incurred for dressing and curing the wound, and for medicine and special diet therefor. The fine to be paid is the fine imposed for the particular kind of assault in which the wound was caused, and not merely the amount of the ex-  
15 penses incidental to the wound.

Vīramitrodaya

Yājñavalkya, Verse 222

He, however, who causes a wound etc. by beating shall be compelled to pay the amount of expenses incurred for the complete  
20 recovery of the one on whom a wound has been caused. The meaning is he should be compelled to pay as much money as would be required for procuring medicine etc. for him. In places where a wound etc. has been caused, not only the payment for it, but also a penalty should be caused to be paid by him as has been prescribed generally for the  
25 particular quarrel. The use of the word *cha* 'and', in the cumulative sense excludes option ( 222 ).

Śūlapāṇi

Yājñavalkya, Verse 222

30 One who causes pain to another by breaking the hand, foot, etc. such a one shall pay the expenses for the restoration, *i.e.* for as much period as is required for him to be under nursing etc. to be able again; for such interval. That punishment which has been stated for a scuffle, that also he shall be made to pay (222).

Having mentioned the penalties for assaults upon the limbs of others, the Author now mentions the penalty for the spoliation of external property<sup>1</sup>

### Yājñavalkya, Verse 223

For striking at the wall, or for boring or breaking or demolishing it, he shall be made to pay a fine of five, ten and twenty *panas* respectively, and also the expenses ( incidental thereto ). 5

Mitākṣharâ :—For striking at a wall with a club or other similar weapon, or for making a whole in it, or for breaking it into two ( sections ), the fine shall be understood to be five *panas*, ten *panas*, and twenty *panas* respectively. For demolishing a wall, moreover, all these three fines shall be inflicted cumulatively. Also the amount ( of expenses ) for rebuilding it shall be paid to the owner. 10

### Sûlapâṇi

#### Yājñavalkya, Verse 223

For an attack with a club etc., or a wound with a stick, or for piercing with the sword, one should be compelled to pay respectively five, ten, and twenty *panas*. Similarly for pulling over a wall or the bricks, etc. by the reasoning of juxtaposition, twenty *panas* also should be declared and he should also be made to pay the expenses for the restoration (223). 15 20

### Yājñavalkya, Verse 224

One throwing in a house a thing ( which is capable of ) causing bodily injury or deprivation of life shall be compelled to pay sixteen *panas* for the first, and the middle amercement for the second offence (respectively).

Mitākṣharâ :—And again, one throwing into the house of another things which cause bodily injury *e. g.* thorns &c. shall be compelled to pay sixteen *panas*; while one throwing things causing deprivation of life *e.g.* poison, snake &c. shall be punished in the middle amercement. 25

### Sûlapâṇi

#### Yājñavalkya, Verse 224

For throwing thorns and other such things in the house as also a snake and the like, for the first he shall be compelled to pay sixteen *panas*, and for the second the middle amercement (224). 30

1. बहिरङ्ग अर्थनाशे. The offences mentioned hitherto refer to a man's अन्तरङ्ग, internal property, such as hand, foot &c.; now the Author mentions offences relating to his external property. Shortly stated and in terms of the Indian Penal Code, the offences enumerated above are Offences against the Body. The author now enumerates Offences against Property.

The Author mentions the punishment for assaulting beasts  
Yājñavalkya, Verse 225

For causing pain, drawing blood, as also for cutting off branches, or a limb of minor beasts, the fine shall be one beginning with two *panas* and upwards.

- 5 Mitākṣharā:—In the case of minor beasts such as the goat, the sheep, the deer and the like, for beating, causing injury, and drawing blood; or a *sākhāṅgachhedane*, for cutting off the branches—by the word *S'ākhā*—branch—are indicated such limbs as are without the circulation of life in them; limbs such as the horns &c.—*āṅgāni*, limbs, such as
- 10 the hands, the feet, and like others. *S'ākhā* (A branch) and *aṅga* (a limb) joined together make up the compound expression *S'ākh-āṅgam*. For cutting that, the fine is (laid down) commencing with two *panas* &c. A fine which has in it two *panas* is a fine of two *panas*. That series of punishments in which a sum of two *panas* is the first *i. e.* the beginning—is a fine 'beginning with two *panas* and
- 15 upwards.' That series of fines moreover is two *panas*, four *panas*, six *panas*, eight *panas*, and in a similar series, and not as two *panas*, three *panas*, four *panas*, five *panas* &c.

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- If it be asked how is that? the answer is: By regard to the
- 20 heinousness of the offence, the three kinds of higher punishments are to be understood as being higher than the lowest punishments. There, also, instead of resorting to the numbers three &c which have not been specifically mentioned, it is better to get at the aggravated penalty by the repetition of the number two which has been specially
- 25 mentioned. Thus there is no fault.

### Śūlapāṇi

Yājñavalkya, Verse 225

- For causing injury to inferior animals such as the goats, sheep, etc. for causing blood, and also for cutting the branches, such as the horns or
- 30 the limbs or feet etc. the punishment shall respectively be in doubling order beginning with two *panas*. At some place the reading is double of the double in order (225).



Yājñavalkya, Verse 226

For cutting off ( their ) genital organs, and for causing death, the middle amercement, as also the price. In the case of superior animals, the fine shall be double in similar cases.

Mitākṣharâ:—Moreover, for cutting off the genital organs of minor beasts, and for causing their death, the fine shall be the middle amercement ; and the price shall be paid to the owner. In the case of superior animals, however, *e. g.* the cow, elephant, the horse, and like others, *eteṣhu sthâneṣhu*, for similar cases, *i. e.* for beating, or drawing out blood or doing similar acts, a fine double of that mentioned before should be understood.

Sûlapâṇi

Yājñavalkya, Verse 226

For the cutting of the genital organs of lower beasts or for killing them the middling amercement and the price should be caused to be paid to the owner of the animal. In the case of higher animals such as the cow etc. double the amount of that stated before should be levied (226).

The Author mentions the penalty for an injury to immovable property

Yājñavalkya, Verse 227

For cutting off the branches, or the trunk, or uprooting entirely the trees which throw down branches having sprouts, as also trees which are the means of livelihood, the fine is twenty *panas* and ( its ) double.

Mitākṣharâ:—*Prarohâḥ*, sprouts, *i. e.* shoots; branches having these are 'branches having sprouts;' *i. e.* those branches which when cut off, develop again at each knot of trees, like the banyan and the like such trees, are called *prarohaśâkhiṇaḥ*, trees which throw down branches having sprouts ; for cutting off the branches of these. That from which the original branches shoot out is called the trunk; for cutting that, as also for cutting up a tree together with its roots, there shall be a fine beginning with twenty *panas* and increased by twofold of the previous one.

This is what is ( intended to be ) said : The three penalties of fine *viz.* twenty *panas*, forty *panas*, and eighty *panas* are inflicted respectively for the offences of the cutting off of the branches and for the offences following in their order.

And even of trees which do not 'throw down branches having sprouts,' but which are a means of livelihood *e.g.* the mango tree and the like, fines similar to these mentioned before must be understood for acts similar to those specified above, *i.e.* in the case of trees which are not  
5 the means of livelihood, nor do throw down branches having sprouts.

### Sūlapāṇi

#### Yājñavalkya, Verse 227

For lopping off the branches of trees, the roots of which enter the ground such as the *vaṭa* etc. or of trees such as the mango and the like  
10 which are the source of livelihood of the people, beginning with twenty *paṇas* the punishment should be increased in doubling order of the one prior in the case of the one following (227)

The Author mentions a rule regarding particular trees

#### Yājñavalkya, Verse 228

15 In the case of trees growing in a sacrificial place, a cemetery, a boundary, a sacred place, or a temple, and trees well known, the fine is two-fold.

Mitākṣharā:--For cutting off the branches or for doing like acts in regard to trees growing on a sacrificial place or in a similar other place, a fine twice that mentioned before. So also in the case of trees which are  
20 well known such as the *pippala*,<sup>1</sup> *palāśa* and the like, the fine is two-fold.

### Sūlapāṇi

#### Yājñavalkya, Verse 228

Chaitya is a tree growing on a high place; *viśruta*, *i.e.* 'well-known', for the cutting of the trunk etc. of these twenty (*paṇas*) is the consequent  
25 (inference) (228).

The Author mentions a rule regarding creepers etc.

#### Yājñavalkya, Verse 229

30 In the case of injury in the aforementioned parts to<sup>2</sup> *Gulma*, *Guchchha*, *Kṣhupa*, *Latās* (creepers), *Pratāna*, *Oṣhadhi*, and *Virudh*, the fine is half of that before mentioned.

Mitākṣharā:—*Gulmāḥ* such as the *Mâlātī*<sup>3</sup> plant and the like, are those creepers which do not develop into any considerable length. **Guchchhas**

1. *Pippala*—is the holy fig tree. *Ficus Religiosa*. *Palāśa* also called *Kimśuka* *Butea Frondosa*. see p. 1151 n. 5 also p. 944 n. 3 (above).

2. These are the several groups of creepers and shrubs with minute distinctions which have been indicated by Vijñāneśvara further on.

3. मालती (Mâlātī) *Echites Caryophyllata*, is a kind of jasmine with white fragrant flowers.

are not in form like creepers, nor are they generally straight and smooth, *e. g.* the *Kuraṇṭaka*<sup>1</sup> plant and like others. *Kṣhupaḥ*, *e. g.* the *Karavîra*<sup>2</sup> plant or the like, which are generally straight and smooth. *Latâḥ* or creepers which develop into considerable lengths such as the grape, *Atimukta*<sup>3</sup> &c. *Pratânâḥ* are creepers without knots or offshoots, 5  
and growing straight such as the *Sârivâ*<sup>4</sup> and others. *Oṣhadhayaḥ*, are those which develop fruit such as the paddy plant etc. *Virudhaḥ* are those which even when cut grow and develop in various parts, such as *Gudûchî*<sup>5</sup> and the like.

In the case of these, for injuries as aforementioned such as cutting 10  
*i. e.* lopping off, a fine half of that mentioned before must be understood.

Thus ends the Chapter on Assault.

#### Vîramitrodaya

Having thus stated the penalty for an assault on the body of an individual, the Author mentions the same for an assault on other things 15

#### Yājñavalkya, Verses 223-29

For striking at *i. e.* felling to the ground, a partition *i. e.* of a wall or for piercing through it with a club etc., or for cutting it *i. e.* splitting into two with a sword etc. or for rending it with a stick etc.—the word *tathâ*, 'similarly', goes with all the three. The meanings of all have 20  
been expressed by the words clubs etc. Five, ten and twenty *paṇas* in order follow alternatively in the case of attack; for felling it down, however, *ṭadwyayam*, 'the expenses for it' *i. e.* the amount of money spent for the reconstruction of the wall. By the use of the word *tathâ*, 'also', simultaneity is intended (223). 25

1. कुरण्टकः ( *Kuraṇṭakaḥ* ) *Ammania Vesicatoria* a species of Amaranth white or yellow in colour and having thorns.

2. करवीर—( *Karavîra* ) *Nerium Odorum* a kind of tree with white, red or yellow flowers; known in marathi as the *Kaṇḥera* ( कण्हेर ).

3. अतिमुक्त ( *Atimukta* ) a kind of creeper otherwise known as *Mâdhavî* ( माधवी ) ( marathi : मोगरा or कस्तुरी मोगरा ) represented as twisting itself round the mango tree and as the beloved of that tree. Also the name of a tree *Dulbergia Oujeinensis* ( निनिश ). Apte.

4. साखी—This plant cannot be identified.

5. गुडूची ( *Gudûchî* )—Marathi-गुडूचेल—*Cocculus cordifolius*—a very useful plant generally growing on trees; it is a drug of considerable importance in the Indian medicine

Things which are likely to cause pain such as thorns etc., or which may cause deprivation of life, such as a snake etc. one throwing these in the house of another, shall be punished in the manner that the throwing causes injury. There the first *i. e.* the one who throws thorns  
5 etc., sixteen *paṇas*; the second *i. e.* one who throws a serpent etc. should be compelled to pay the middle amercement (224).

In the case of minor beasts such as the deer, the goat etc. for an attack which brings out blood and causes pain, or for cutting off the branches in the form of the horn etc., or for the injury to a limb such  
10 as a foot etc. a series of punishments of which two *paṇas* is the first shall be inflicted. This is the meaning. Here by mentioning the number two the increase in the *paṇas* is by two and two in respective order (225).

For cutting off the organ of minor beasts or for killing them, the  
15 middle amercement shall be the punishment. And he shall also pay the price to the owner. For causing injury to superior animals, double the amount of penalty stated in the case of minor beasts should be inflicted. By the use of the word *cha* 'and', here also the price should be paid. By the use of the word *eva*, 'only', is excluded the payment of the price  
20 in the case of the four such as the one who causes pain etc. (226).

In the case of trees which throw down branches having sprout, such as the *vātā* tree and the like, and also trees which are the means of livelihood such as the mango and the like, for cutting off the branches or the entire trunk from its roots up and of its limbs the punish-  
25 ments shall be double commencing with twenty *paṇas i. e.* twenty-  
forty, eighty respectively in the case of the three. By the use of the word *cha*, 'and', is included the fact that in the case of trees with roots going down being the source of livelihood and the rest etc., for cutting it off, double that shall be the punishment (227).

30 *Chaitya*, 'a sacrificial place', *i. e.* a lovely place; boundary *i. e.* the limit of two villages and the like. On these *i. e.* on these holy and sacrificial places, on the places where there are temples of gods, for cutting off the branches of trees growing there, as also in the case of well known trees such as the *pippala* etc. double of that mentioned  
35 before *i. e.* of twenty *paṇas* etc. shall be the punishment. By the use of the word *cha* is added by inclusion the payment of expenses for restoration (228).

*Gulmāḥ* i. e. creepers not long nor thick such as *Mālatī* etc. *Guchchḥaḥ* not having the form of a creeper and not straight such as the *Kuraṇṭaka* and the like. *Kṣhupāḥ*, small trees with straight stems such as the *Karavīra* plant and the like. *Latāḥ*, creepers extending to great lengths such as the *atimukta* and the like. These also growing thick without any knots or offshoots such as *sārivā* etc. *Oṣhadhayāḥ*, herbs which develop fruit such as the paddy plant etc. Although cut, they grow variously again and so called *virudhāḥ*, such as the *guḍūchī* and the like. For the cutting off of the branches of these, half of what has been stated before, viz. of twenty *pañas* i. e. ten *pañas* shall be the punishment. Here also the payment for the expenses of the recoupment is also to be observed. **Manu**<sup>1</sup>: "He who raises his hand or a stick, shall have his hand cut off; he who in anger kicks with his foot shall have his foot cut off (281). A low caste man who tries to place himself on the same seat with a man of a high caste shall be branded on his hip and be banished, or (the king) shall cause his buttocks to be gashed (282). If out of arrogance he spits (on a superior), the king shall cause both his lips to be cut off; if he urines (on him), the penis; if he breaks wind (against him), the anus (283). If he lays hold of the hair (the king) should lop off his hands unhesitatingly, likewise (if he takes him) by the feet, the beard, the neck, or the scrotum (284)." This penalty is for a Śūdra in regard to a Brāhmaṇa. **Viṣṇu**<sup>2</sup>: "One who causes pain without blood, thirty *pañas*, with blood, sixty *pañas*." For fear of prolixity other punishments are not stated here (223-229).

### Śūlapāṇi

#### Yājñavalkya, Verse 229

*Gulmāḥ*, such as the *mālatī* plant etc. *Guchchḥaḥ*, such as the *Kuraṇṭaki* etc., *Kṣhupāḥ*, such as the *Karavīra*, etc. *Latāḥ* i. e. creepers such as grapes etc. *Praśānāḥ* i. e. creepers without knots or offshoots such as the *sārivā* etc. *Oṣhadhayāḥ* i. e. herbs such as corn trees which develop fruit. *Virudhāḥ* i. e. creepers which even when cut grow with special strength, such as the *guḍūchī* etc.; for the cutting of the trunk etc. of these, half of the penalty stated before. And the payment for their growth again.

Thus ends the Chapter on Assaults.

## CHAPTER XX

### Sâhasas or Heinous Offences

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Now, intending to discuss the title of law celled the *Sâhasa*, the Author first states its definition

5

**Yājñavalkya, Verse 230 (1)**

**When common property is forcibly carried away, that is called a *Sâhasa*.**

**Mitâkṣharâ:**—A deprivation of property which is *sâmânya*, common, i.e. which is held in common, or, (also) having regard to its general characteristic of being incapable of appropriation at will, which is another's property is a *Sâhasa*; Whence ? *prasabhaharaṇât*, on account of a forcible carrying away, in short, on account of a deprivation by a show of force.

This is what is (intended to be) said : By disregarding the Royal sanction, or the protest of the people, whatever act of beating, or assaulting the wife of another and the like is committed in the presence of State Authorities or the ordinary people, all that is a *Sâhasa*; this is the nature of a *Sâhasa*. Therefore, even in the case of a deprivation of property which is common or which is another's, there is a *Sâhasa* on account of the same being done by means of a show of force.

The characteristics of a *Sâhasa* have been described by *Nârada*<sup>1</sup> also : " Whatever act is performed by force by persons inflamed with ( the pride of ) strength is called a *Sâhasa*; *sahaḥ* means force in "this world. " The *Sâhasa* of this description, although it is closely allied to theft, abuse, assault, and seduction, of women, still differs from these on account of the special element of show of excessive force, and so has been specially mentioned with the object of ( laying down ) excessive punishments.

Of that also, after having laid down a threefold division into the lowest and the others, and with a view to demonstrate the different punishments, the characteristics have also been described by the same Sage<sup>2</sup> : " That again is declared to be threefold in the *S'âstras* " viz. ( *Sâhasa* of ) the first, middlemost, and the highest degree. The " definition thereof has been given separately ( 3 ). Destroying, reviling, disfiguring or otherwise ( injuring ) fruits, roots, water and

“the like, or agricultural utensils, is declared to be a *Sâhasa*, of the  
“first degree (4). (Injuring) in the same way clothes, cattle, food,  
“drink, or household utensils, is declared to be a *Sâhasa* of the  
“middlemost degree (5). Taking human life by means of poison,  
“weapons, and the like, indecent assault on another man’s wife, and  
“whatever other (offences) encompassing life (may be imagined) is  
“called a *Sâhasa* of the highest degree (6). The punishment to be  
“inflicted for it must be proportionate to the heaviness of the crime,  
“(so however as) not to be less than a hundred (*Paṇas*) for a  
“*Sâhasa* of the first degree; whereas for a *Sâhasa* of the middle-  
“most degree the punishment is declared by persons acquainted with  
“the *S’âstra* to be not less than five hundred (*paṇas*) (7). For a  
“*Sâhasa* of the highest degree, a fine amounting to no less than a  
“thousand *paṇas* is ordained. (Moreover) corporal<sup>1</sup> punishment  
“confiscation of the entire property, banishment from the town, and  
“branding, as well as amputation of that limb (with which the crime  
“had been committed) is declared to be the punishment for *Sâhasa* of  
“the highest degree (8).” Corporal punishment and the like punishment  
in a *Sâhasa* of the highest degree should be administered cumulatively<sup>2</sup>  
or alternatively by a discriminating regard to the offence committed.

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Among these, the Author mentions the penalty for a *Sâhasa*  
which is in the form of deprivation of another’s property

Yājñavalkya, Verse 230 (2).

The fine is twice the amount of the value of it, but four-fold when (the  
offence is) denied.

25

Mitākṣharâ :—Of it, i.e. of the thing taken away, *dwiguṇe*, twice the  
amount, *mūlyât*, of the value, shall be, *daṇḍah*, the fine. He, however, who  
having committed a *Sâhasa* *nihnute*, denies, saying ‘I did not do,’ for  
such a one, a fine is inflicted which is *chaturguṇa*, four times the value  
of the thing.

30

From this very rule where a special penalty is laid down, it may<sup>3</sup>  
be inferred that the general rules of punishment laid down in con-  
nection with *Sâhasa* of the first degree and the like, are applicable to  
cases other than (where there has been) the deprivation (of property).

1. वधः—Chastisement which may extend to Capital punishment.

2. समस्तव्यस्ताक.

3. गम्यते ।



## Viramitrodaya

- "Whatever act is performed by force by a person inflamed with  
 "( the pride of ) strength is called *Sâhasa*; *saha* means force in this  
 " world. Theft is a special variety of it. The difference between  
 5 "( *sâhasa* and theft ) is as follows; where the criminal act consists of a  
 " forcible attack it is *sâhasa*, where it is done by fraud it is theft. "  
 Thus characterized by Nârada,<sup>1</sup> the Author begins the title of law  
 called *Sâhasa* which consists of a forcible injury in spite of the know-  
 ledge of the owner and which is distinguished from theft.

## 10 Yājñavalkya, Verse 230

- Sâmānya*, 'common', *i. e.*, which is held as common property; in  
 short which is another's property. Property of this character such as  
 gold etc. Of that forcibly carrying away *i. e.* dropping with force in  
 the presence of the owner. Such a taking away by regard to the  
 15 literal meaning is *sâhasa*, declared by the word *sahasā*, *i. e.* declared in  
 the Smṛtis. There, of that *i. e.* of the property twice the value when it  
 is snatched away and four-fold when it is denied *i. e.* concealed ( 230 ).

## S'ûlapâṇi

## Yājñavalkya Verse 230

- 20 Common property *i. e.* property of a low kind, such as grain etc., or of  
 the ownership of the many, of common property such as corn etc. Of  
 common property also such as corn etc., deprivation in the presence of the  
 owner by force *i. e.* taking it away by compulsion constitutes a title of  
 law known as heinous offences. When, however, anything is done in the  
 25 absence of the owner or is denied after committal, that is known as theft.  
 As says Manu:<sup>2</sup> "It will be an offence of robbery when it is committed  
 " in the presence (of the owner) and with violence; if (it is committed) in  
 " his absence it becomes theft; as also if it is denied after it has been  
 " taken." "In the presence" *i. e.* in the presence of the owner; in the absence,  
 30 it becomes theft; 'denies' *i. e.* conceals.

- Nârada<sup>3</sup> having stated five kinds of *Sâhasas* such as the homicide  
 etc. has also stated an act done with violence to be *Sâhasa* thus : " Man-  
 " slaughter, robbery, an indecent assault on another man's wife and the  
 " two species of assault, these are the five kinds of heinous offences.  
 35 " That again is of three kinds etc. (see Nârada ch. xiv 3-8; see above Mitāk-  
 ṣharâ\* p. 1276 l. 3 to p. 1277 l. 18 ) Whatever act is performed by force by  
 persons inflamed with ( the arrongance of ) strength is called *Sâhasa*  
 ( a heinous offence ); *saha* or force means strength in this world ( 230 ).

The Author mentions a rule regarding one causing a *Sâhasa* (to be committed)

**Yājñavalkya, Verse 231**

He who causes the commission of a *Sâhasa*, shall be made to pay a double fine; and he who causes it by declaring "I shall pay" shall be made to pay four-fold. 5

**Mitākṣharâ** :—Yah, he, however, who says (to another), "Commit *Sâhasa*", and (thus) *kârayati*, causes a *Sâhasa* to be committed, *dwiguṇam dāṇdam dâpyah*, shall be made to pay twice the amount of penalty, imposed upon the actor himself. He, moreover, who says 'I shall pay you money', and thus causes a *Sâhasa* to be committed, such a one shall be compelled to pay *chaturguṇam*, a four-fold fine, on account of the aggravation of the offence. 10

**Vîramitrodaya**

The punishment for one who causes a *Sâhasa* is like the one who perpetrates it (himself). So the Author says 15

**Yājñavalkya, Verse 231**

He who causes a *sâhasa* to be perpetrated by an order "do the *sâhasa*;" such a one shall be compelled to pay a penalty twice that for the perpetration of the *sâhasa*. "On a possibility occurring of a "penalty being inflicted upon you, I shall pay the amount", he who saying thus causes a *sâhasa* shall be compelled to pay four times that for the perpetration of *sâhasa* (231). 20

**Sûlapâṇi**

**Yājñavalkya, Verse 231**

He etc. He who causes by his words *viz.* 'commit an offence', such a one should be compelled to pay a penalty twice of that for the offence. He, moreover, who causes it to be done with the words "I shall give you money, you do", shall be compelled to pay four times on account of the aggravated form (of the offence) (231). 25

The Author mentions a special rule regarding a particular offence for abusing the venerable, etc. 30

PAGE 136\*

The Author mentions rules regarding particular *Sâhasikas*

**Yājñavalkya, Verses 232 & 233.**

He who abuses or disobeys the venerable, who beats his brother's wife, who does not give what is promised, who breaks open a house (which is sealed (232); 35

Or who does an injury to his neighbour, or blood-relations and the like, for all such offenders fifty *panas* is the fine ; this is the invariable rule.

Mitākṣharâ :—Of the venerable, *arghasya*, *i. e.* those who deserve to be respected, *e.g.* the teacher &c; he who offers an abuse or transgresses  
 5 their commands, as also he who beats his brother's wife ; similarly one who does not pay an amount which was promised, *i. e.* agreed upon; he, also, who breaks open a house which is sealed ; also, he who does an injury to the owners of houses or fields adjoining his own house or field, or to blood relations, *i. e.* those born in his own family—and  
 10 by the use of the term *âdi*, 'Also', ( he who causes injury ) to the inhabitants of his own village or country—all these shall be punishable with a fine of fifty *panas*.

#### Vîramitrodaya

The Author mentions particular punishments for particular *sâhasas*

15 Yājñavalkya, Verses 232-33

One who levels an abuse or transgresses the commands of the venerable people such as the preceptor etc.; he also who gives a beating to the brother's wife ; likewise one who does not deliver something such as gold etc., which has been accepted for delivery from another ;  
 20 he who breaks open a house which is sealed with a signet ( 232 ) ;

One who does an injury to any one of these, *viz.* the inhabitants of his own or of the neighbouring village, gentiles *i. e.* persons born in his own family ; and by the use of the word *âdi*, 'et cetera' *śreṇi* and others also; for these stated before, the penalty is measured by  
 25 fifty *panas*. Thus has been definitely declared the punishment in the *Dharmasâstra*. By the use of the word *cha*, 'and', is included one who does not indulge in a speech ( 233 ).

#### Śûlapâṇi

Yājñavalkya, Verse 232

30 He who abuses and also disobeys the respectable, such as the preceptor etc., as also one who beats his brother's wife ; similarly he who does not give what is promised, and also one who breaks open a house which is sealed ; also one who does an injury to the owners of the fields or houses adjoining his own house or field, as also his relatives *i. e.* persons born in his family—by the  
 35 use of the word *âdi* 'and the like', as also persons of his village or country—such a one should be punished with fifty *panas* (233).

Of the *Sâmanta* such as a betelnutseller and the like as alone are authorized by an association. By the use of the word *Âdi* for one causing injury to *Śreṇi* and the like also, a fine of fifty *panas* should be imposed  
 40 ( 233 ).

Yājñavalkya, Verses 234-237

He who wantonly consorts with a widow, who does not run ( in response ) to a call ( for help ), who causelessly raises a cry ( for help ), he who, being a Chaṇḍāla, touches men of the higher classes (234);

Who feeds Śûdra ascetics on ( the occasions of ) religious or obsequial ceremonies, who pronounces an improper oath, who being unqualified, does an act which can be performed by those ( only ) who are qualified (235); 5

As also he who destroys the virility of a bull or inferior beasts, who conceals common property, who destroys the foetus of a female slave (236);

Or whoever being the father, the son, the sister, and a brother, the husband and the wife, the preceptor and the pupil, abandons each the other when ( that other is ) not degraded, shall be fined a hundred *panas* (237). 10

Mitākṣharâ :—Moreover, he who without a *Niyoga* or a proper appointment has connection with a widow ( merely ) by self-will; or who, upon a cry for help being raised by persons frightened by thieves and like others, does not run for help even when he is able; as also he who causelessly raises a cry ( for help ); he, who being a Chaṇḍāla touches a Brâhmana or others; also he, who, feeds Śûdra ascetics such as the Digambaras and others at religious or exequial ceremonies; he, also, who pronounces an improper oath, *e.g.* "I shall take my mother" &c; similarly, one who being unqualified *e.g.* a Śûdra and the like, does an act *e.g.* study &c., which can be done only by one qualified. A bull means a strong bull; ' minor beasts ' such as a goat &c.: one who destroys the virility, *i.e.* the procreative power of these. In the case of the reading ( one who destroys the virility ); ' of trees and minor beats &c.'—( it should be interpreted thus ; )—one who causes the destruction of the fruits or budding blossoms of trees etc., by means of sprinkling asafœtida or other drugs; he who conceals common property, *i.e.* who causes a deception in regard to property which is common; as also one causing the abortion of a female slave; as also those who being related as their father etc. abandon each the other without being degraded, all these severally deserve to be fined one hundred *panas* each. 15 20 25 30

Thus ends the chapter on Sâhasas.

## Vīramitrodaya

With a view to treat of adultery with women as distinguished from *sāhasa* and although differentiated from *sāhasa* there being comparison between the two, the Author while stating the penalty for that, mentions  
5 the penalty for others also with a view to brevity of the composition

## Yājñavalkya, Verses 234-37

*Svachchhandena*, 'wantonly', i. e. *svechchhayā*, i. e. 'according to his impulse,' having intercourse with a widow; when a cry is raised by those frightened by robbers and others, one who though competent does  
10 not run up for preventing it; one who causelessly raises a hew and cry; one being a *Chandāla* touching Brāhmaṇas or the like; one who feeds the Śūdras or the ascetics such as the nude ones and the like at rituals in honour of the gods or of the manes; one who indulges in an improper oath such as "I shall approach the mother if this is false"  
15 and the like; similarly one unfit such as the *śūdra* and the like performing the acts of those who are qualified such as the Brāhmaṇa and others studying the vedas; one who destroys the virility i. e. procreative capacity of bulls or lower beasts; one concealing common property which is undivided; one who destroys the embryo of a female slave; and any one of the following two abandoning the other  
20 viz. father and son, sister and brother, husband and wife, preceptor and the pupil, when the other has not been degraded; such a one — i. e. all these, become liable for a penalty of one hundred paṇas. The use of the first *cha* is inclusive of one who raises up a cry even for a reason; by the second use, of one who has fallen; by the third, of the heretics; by  
25 the fourth, of a ritual in honour of men; by the fifth, of a bull; by the sixth, of the mother and the son renouncing each other; of the father and son by one alone; for the abandonment of the other Śaṅkha says: "He who lustfully abandons those not degraded shall incur the  
30 "penalty of a hundred." This moreover, is, when the abandonment is by the unlearned; for an abandonment by the learned, however, says Manu<sup>1</sup>: "Neither the mother, nor the father nor wife nor the son  
"should be cast off; one casting them off when they are not guilty of "degradation shall be fined by the king six hundred". When the  
35 learned cast off each other, a penalty of three hundred should be understood (234-37).

Śūlapâṇi

Yājñavalkya, Verse 234

He who has an intercourse with a widow without an "appointment", one who does not run up (for help) when loudly invoked by those oppressed with the fear of robbery, as also one who causelessly raises up a cry; one who being a *chandāla* touches the Brāhmaṇa and the others. 5

Yājñavalkya, Verse 235

He also who causes the ascetics such as the *digambaras* etc. to be fed at rituals in honour of the Gods and the manes; he also who utters an improper oath *e.g.* "I shall have recourse to mother", and he also who being himself unfit such as a Śūdra etc. does acts for which he is not fit such as imparting education etc. (235). 10

Yājñavalkya, Verse 236

*Vṛṣhaḥ*<sup>1</sup>, 'a bull', *i.e.* a fat bull; other animals such as goat etc., one who destroys the virility *i.e.* the procreative capacity of these. For the reading, trees, lower animals etc., one who by the use of medicaments such as *asaphoetida* etc. causes the fruits and the flowers of trees to fall, one who causes deception regarding common property, one who causes abortion to a female slave (236). 15

Yājñavalkya, Verse 237

Those also such as the father and the like although not degraded abandon each other, all these shall be liable to pay a penalty of a hundred *panas* (237). 20

On the occasion of discussing *Sâhasas*, the Author mentions a penalty for similar offences by the washermen and like others 25

Yājñavalkya, Verse 238

A washerman wearing the garments of another shall be fined three *panas*; and in cases of a sale, hiring out, pledge, or a loan on request ten *panas*.

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**Mitākṣharâ** :—**Nejakah**, a washerman, is one who cleans clothes (by washing); such a one, if he himself puts on clothes made over to him for being washed, then should be fined three *panas*. He, moreover, who sells them, or hires out, *e.g.* (with an agreement such as): "This cloth is being given to you for such a period, so much money should be given to me", and who thus lets out on hire, or makes a pledge of it, or gives it to his relatives and friends upon request, such a one shall be fined ten *panas* for each offence. Those clothes, moreover, must be washed 30 35

1. वृषः-वर्षतीति—a scion bull.

on a smooth plank of the silk-cotten tree (*S'âlmali*), not on a stone, and they should not be exchanged,<sup>1</sup> nor should they be allowed to be worn in his own home, otherwise he shall be punished, *vide* the text of **Manu**<sup>2</sup>:  
 5 "A washerman shall wash gently on a smooth board of the silk-cotton  
 "wood; he shall not return the clothes (of one person) for the clothes  
 "(of another), nor allow anybody (but the owner) to wear them."

When, moreover, he destroys them through a mistake, then the rule stated by **Nârada**<sup>3</sup> should be observed: "An eighth part of its value  
 "is the depreciation for a wearing apparel washed for the first time; a  
 10 "fourth, when (it is washed) twice; a third, (when washed) three  
 "times, and a half (when it is washed) four times (8). After the de-  
 "preciation of a half (of the value), a quarter shall be (considered  
 "as) reduced thenceforth, till the fringe is tattered, and the cloth  
 "becomes worn. In the case of a tattered cloth there is no rule regard-  
 15 "ing the reduction of its value."

Thus, for a cloth which was purchased for eight *panas* and washed only once, and which is lost, the price to be paid should be the (quantity of) *panas* minus an eighth part—*i. e.* one *pana* (of the cost price); for a twice-washed cloth, however, less by a quarter, and for a thrice-  
 20 washed cloth, less by a third part; for a cloth washed four times, a half (of the price) *i. e.* four *panas* should be given. Thereafter, the remaining fraction of the price lessened by a quarter for each wash should be given, until it becomes tattered. Of a tattered cloth, moreover, which is destroyed, the price should be determined at the option.

25

#### Vîramitrodaya

Now on the occasion of discussing *Sâhasas* the Author mentions penalties for offences similar to these by means of thirteen verses

#### Yājñavalkya, Verse 238

*Nejakah*, 'a washerman', *i. e.* one who washes clothes. In the  
 30 reading *rajaka* also, the same is the meaning. When putting on the silken cloth of another given to him for washing, he shall be made to pay the penalty of three *panas*.

He, however, who either sells or hires out for use with an agreement for the hire, or who pledges it for a fixed period, or who offers to  
 35 his relatives for ornamentation on request clothes made over to him for washing, such a one shall be made to pay ten *panas* (238).

1. व्यत्यस means inversion, perversion; Bâlabhattacha.

2. Ch. VIII. 396.

3. Ch. IX. 8-9



Śūlapâṇi

On the occasion of treating the Sâhasas the Author mentions a penalty for the washermen and the like in regard to offences of a like nature.

Yājñavalkya, Verse 238

A washerman, *i.e.* one who cleans the clothes; such a one if he himself puts on clothes which have been made over to him for washing, then he should be fined three *panas*. One, moreover, who sells these or pledges on an agreement that "this is being given to you for use for a particular period; you should give me so much money", in this way one who pledges it or creates a charge on it, or one who gives it over to his relatives on a request, such a one should be punished with ten *panas* for each offence.

These clothes, moreover, should be washed on a smooth plank of the silk-cotton tree and not on a stone. As Manu<sup>1</sup> has observed: "Nor shall he return the clothes (of one person) for the clothes (of another), nor allow anybody to wear them" (238).

Yājñavalkya, Verse 239

For witnesses in a dispute between a father and a son, the fine is three *panas*. Also for him who engages himself therein, for such a one also, the fine is eight-fold.

Mitākṣharâ:—In a dispute between a father and a son, he who undertakes to be a witness, and does not ward off the dispute, such a one shall be fined three *panas*. He, moreover, who in a dispute with a wager between them, becomes a surety—and by the use of the term *cha*, 'also', he who fans the dispute between them, even he,—shall be fined an amount eight times three *panas*, *i. e.* twenty-four *panas*. In the case of (a dispute between) a husband and a wife, or like others, this same (rule as to the) fine must be followed.

Vîramitrodaya

Yājñavalkya, Verse 239

In a quarrel between the father and the son, one who undertakes to be a witness and does not ward off the quarrel, for him the penalty is measured by three *panas*. He, moreover, who intermeddles in their dispute and aggravates the quarrel, for him — by the use of the word *api*, 'even', in such a dispute for the surety—a fine of eight *panas* should be administered (239).

Śūlapâṇi

Yājñavalkya, Verse 239

For witnesses in a dispute between a father and son the penalty is three *panas*. For one who intermeddles, the penalty is eight *panas* (239).

## Yājñavalkya, Verse 240

He who falsifies scales, royal mandates, measures, and also standard coins, and also he who uses these, shall (both) be forced to pay the highest amercement.

- 5 Mitākṣharâ:—Tulâ, scales, i. e. the weighment rod. Sâsanam, a Royal mandate, has been described<sup>1</sup> before. Mâna, a measure, such as a *prastha*,<sup>2</sup> a *drona*, and the like. Nâṇakam, a standard coin, i. e. (money) stamped with (the royal) mark or the like, such as a *dramma*,<sup>3</sup> a *niṣhka*, or the like.

- 10 In the case of these, he who *kûṭakṛt*, falsifies them, i. e. who makes them different from the general standard of the country, whether less or more, or stamps (money such as) *dramma* and the like in an unusual manner, or alloys it with copper or other (base metal), and he also who uses them knowing them to be false, both of these shall each be fined in the highest amercement.

15

## Vîramitrodaya

## Yājñavalkya, Verse 240

- Tulâ, 'scale' i. e. the weighing rod; sâsanâ, 'the royal command', has been mentioned before; mânam, 'measure', such as *prastha*<sup>2</sup> etc.; nâṇakam, 'coin', marked with signets such as the *niṣhka*, *dramma* etc.
- 20 Of these one who manufactures a counterfeit and fraudulently causes delusion in another, and one who even though knowing, enters into transactions with these counterfeiters, such a one should be compelled to pay the highest amercement. By the use of the first *cha* is included one who causes the counterfeit; and by the second *cha*, one who deals with a counterfeit (240).
- 25

## Sûlapâṇi

## Yājñavalkya, Verse 240

One who manufactures false scales and with these who knowingly makes sales and purchases; coin such as *vr̥ṇaka* etc. (240)

1. i. e. in the Âchârâdhyâya Verses 318, 319, 320. page 580 Mr. Colebrooke gives—"Market rates—(literally, Commands), the king's written precepts regulating market rates."

2. *Prastha*, *Drona*—kinds of measures. A *Prastha* is a measure having thirty two *palas*, while a *Drona* is either the same as an *Âḍhaka*, or equal to '4 *Âḍhakas* or  $\frac{1}{16}$ th of a *Khâri* or 32, or 64 *shers*.

3. *Dramma* (Colebrooke reads *bherma*)—a *drachma* (c. f. the greek *drachm*).

*Niṣhka*—A golden coin of different values, but generally taken to be equal to one *Karṣha* or *Sutarṇa* of 16 *māḡhas*; or also a weight of gold equal to 108 or 150 *suvarṇas*.

The Author propounds a rule regarding the examiner<sup>1</sup> of coins  
Yājñavalkya, Verse 241

He who declares good money bad, as also he who declares bad money good, that examiner of coins shall indeed be compelled to pay the highest amercement.

Mitākṣharâ:—That examiner of coins, moreover, who declares a *dramma* or other coin good even when it is alloyed<sup>2</sup> with copper, or the like, or declares a good coin to be false, such a one shall be fined in the highest amercement.

Vîramitrodaya

Yājñavalkya, Verse 241

That examiner of coins who declares a faultless (coin) to be counterfeit, and a counterfeit coin to be faultless, shall be made to pay the highest amercement. By the use of the word *cha* is included one who although knowing it to be counterfeit says "I do not know" (241).

Śûlapâṇi

Yājñavalkya, Verse 241

The examiner of coins i.e. one who tests the marks. The rest is clear.

The Sage mentions a rule regarding a physician  
Yājñavalkya, Verse 242

A physician falsely posing himself as such, shall be fined in the first amercement in the case of lower animals; in the middlemost, in the case of men; and in the highest amercement, in the case of royal persons.

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Mitākṣharâ:—Bhīṣhak, a physician, moreover, who, *mithyâ*, falsely, i.e. even when he is ignorant of the science of medicine, yet for the purpose of making out a livelihood, poses himself as a duly qualified physician, and treats medically lower animals, men, or royal persons, such a one shall be fined in the first, middlemost, and the highest amercements respectively.

There also, the amount of the fine, whether it should be small or great, must be determined in the cases of lower animals &c. by regard to the value (of the particular beast), or the *varṇa* (of the man), or the close relationship to royalty.

1. Colebrooke reads as if the introductory remark of Vijñāneśvara referred to the coins and not to the person testing them.

2. i. e. which is over-alloyed &c.

## Vîramitrodaya

## Yājñavalkya, Verse 242

- An apothecary falsely posing as one dealing with diseased animals  
*i. e.* animals such as the cow and the like, and giving them treatment,  
 5 the first amercement, and posing himself falsely with reference to men  
 not connected with royalty, the middle amercement; and the apothecary  
*i. e.* the physician posing falsely with royal personages shall be made  
 to pay the highest amercement ( 242 ).

## Śûlapâṇi

10

## Yājñavalkya, Verse 242

"Lower animals" such as the cow etc. and in regard to ordinary, such  
 as man, the middle (amercement) (242).

## Yājñavalkya, Verse 243

- He, moreover, who restrains one who ought not to be restrained, or  
 15 releases one who is restrained before the decision (in his case) is arrived  
 at, such a one shall be fined in the highest amercement.

- Mitâkṣharâ:—He, moreover, who restrains without the king's com-  
 mand one who does not deserve to be restrained and who is innocent;  
 as also he who releases one who was restrained being summoned in  
 20 connection with a trial at law, even before yet the trial was conclud-  
 ed, shall be compelled to pay the highest amercement.

## Vîramitrodaya

## Yājñavalkya, Verse 243

- One who restrains one who does not deserve to be restrained, and  
 25 who being in authority discharges *i. e.* does not restrain one who  
 deserves to be restrained, as also one who being authorised lets off one  
 who has been summoned for a judicial trial when the trial has not  
 been decided, shall be compelled to pay as penalty the highest amerce-  
 ment. By the use of *cha* several times is included one who beats one  
 30 who should not be beaten, as also one who releases one who has been  
 imprisoned ( 243 ).

## Śûlapâṇi

## Yājñavalkya, Verse 243

- Having summoned one in whose case a decision has not been given,  
 35 for the giving of a decision (243).

### Yājñavalkya, Verse 244

He who abstracts one-eighth share by a (false) measure or balance, such a one shall be compelled to pay a fine of two hundred *panas*, and (proportionately) determined (according) as the loss is greater or less.

**Mitākṣharâ:**—That grocer, moreover, who, from paddy, cotton or any other vendible commodity abstracts an eighth part by (using) a false measure, or a false balance, or by any other means, such a one shall be fined two hundred *panas*. The smallness or greatness of the fine must be<sup>1</sup> determined by regard to the greater or less quality of the portion abstracted.

### Vīramitrodaya

#### Yājñavalkya, Verse 244

That grocer who in the case of vendible articles like the paddy, cotton etc. by a counterfeit measure or by a counterfeit balance deprives people of an eighth part, such a one should be made to pay the penalty of two hundred *panas*. In the case of more or less of the eighth part taken away, the penalty should be determined according to the less or greater loss caused. By the word *api*, 'even', is included the deception in counting and the like; by the use of the word *cha* is included the greater or less portion of the part taken off (244).

### Śûlapâṇi

#### Yājñavalkya, Verse 244

*Mānena* i. e. by measure such as a *prastha* etc. for an increase or a decrease and of the same when an eighth has been increased or decreased shall be compelled to pay a penalty as may be determined after investigation (244).

### Yājñavalkya, Verse 245

He who adulterates with articles of inferior quality, medicines, oil, salt, perfumes, grain, sugar and the like, which are kept for sale, shall indeed be compelled to pay sixteen *panas*.

**Mitākṣharâ:**—*Bheṣhajam*, a medicine, i. e., medicinal drug; *snehaḥ*, oil, such as clarified butter and the like; 'articles of perfumery,' such as *uśîra*<sup>2</sup> and the like. The term *âdi*, 'and the like,' comprehends *asafoetida*, pepper and the like. In the case of these, the fine for mixing inferior substances with these for the purpose of sale, is sixteen *panas*.

1. So that if the fraud be less than an eighth portion, the fine shall be less than two hundred *panas*, and greater if the fraud exceed the eighth portion.

2. Known as *khus* or *wâlâ* (खस in Marathi)—the root of the (खिर) *Virapa* grass—*Andropogon muricatus*.

## Vîramitrodaya

## Yājñavalkya, Verse 245

5 *Bhaiṣajyam*, 'medicament', i. e. medicinal articles; *snehah*, 'oily things', such as ghee etc.; *lavaṇam*, 'salt', such as the rock-salt, *gandhaḥ*, 'perfume', such as *usîra* etc.; the corn and jagri are wellknown; the meaning of the word *âdi* (indicates) *asaphocetida*; *marich*, pepper etc. In these articles of sale one mixing an article of inferior quality for the purpose of sale shall be compelled to pay sixteen *paṇas*. By the use of the word *tu*, 'however', is excluded the penalty of two hundred or the like stated before (245).

## Sûlapâṇi

## Yājñavalkya, Verse 245

One effecting a sale after mixing an article of inferior quality shall be punished sixteen *paṇas* (245).

## Yājñavalkya, Verse 246

15

When earth, hide, gem, yarn, iron, wood, bark, or cloth, which is not of good quality, is made (to appear as) of good quality, the fine is eight times the amount of the sale.

20 *Mitâkṣharâ* :—Moreover, when a superior quality does not exist in articles such as hide &c., it is regarded as being *ajâti*, not of good quality; for giving such a thing the appearance of (a substance of) good quality, *jâtikarane*, i. e. for the purposes of the sale, making it resemble a thing of a valuable kind, by the addition of (a different) odour, colour or juice; as for instance, counterfeiting fragrant *Āmalaka*<sup>1</sup> by adding the odour of the *Mallikā*<sup>2</sup> flower to (a piece of) earth; or the tiger-skin by adding vivid colours to a cat-skin; or a ruby by tinging a *sphaṭika* bead with another hue; or a silken thread, by giving a glossy appearance to a cotton thread; or silver, by bringing on a bright colour by polishing black metal; or sandal wood by adding the odour of sandal to a piece of *Bilva*<sup>3</sup> wood; or passing the bark of *kañkola*<sup>4</sup> for that of a clove; or counterfeiting a silken cloth by creating a glossy appearance on a cotton cloth; (in such

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1. Known in Marathi as आंबळा ( Āvlā ) *Nyctanthes undulata*.

2. *Mallikā* is a kind of jasmine. *Phyllanthus emblica*.

3. Known as the *Bela* ( बेल ) tree. *Aegle Marmelos* or wood-apple.

4. *Kañkola* is the name of a plant bearing a berry, which also is known as *kañkola*.

cases ) the fine must be understood to be eight-fold of the commodity (offered) for sale *viz.* the earth, leather and the like, which is made to resemble (another commodity). \_\_\_\_\_

Vîramitrodaya

Yājñavalkya, Verse 246

In the case of earth etc. as articles for sale and not of the requirep quality *i. e.* when it is not of the quality which will induce the higher price, one by bringing on a bright colour etc. with a view to make it appear of the quality which will induce a higher price, should be fined eight times the price of the best article of the kind ( 246 ).

Śûlapâṇi

Yājñavalkya, Verse 246

Of these which are of a lower value, one who through covetousness counterfeits into one of good quality shall be fined eight times the amount of the price received; as for example, mixing earth with the fragrance of the *mallikâ* flower and selling it as fragrant *âmalaka*, and such other acts may be inferred.

Yājñavalkya, Verses 247-248

He who pledges or sells a sealed casket or a valuable vessel which is artificially prepared, shall be fined thus: (247).

For (a thing the value of which is) the fraction of a *pana*, fifty (*panas*), and for a *pana*, a hundred; for two *panas*, two hundred; and when the value is higher, (the fine is) higher.

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**Mitākṣharâ** :—Seal means a cover. That which has the cover of a seal is a sealed casket, **samudram**. **Parivartanam**, artificial preparation, *i. e.* transformation. He who exhibits one casket (*i. e.* one) containing pearls, and changes it by a sleight of hands for another casket filled up but containing *Sphaṭikâs* (or glass stones), as also he who counterfeits a valuable commodity such as the musk and the like, and either sells it or deposits it as a pledge, the determination of fine for such a one should be understood as follows: If the actual price of the counterfeited musk or other article is the fraction of a *pana*, **pane bhinne**, *i. e.* less *i. e.* if its value is less than a *pana*, the fine for a sale in which the counterfeited article was sold shall be fifty *panas*. In the case where, however, the price is a *pana*, the fine shall be a hundred, and in the case of an article of the value of two *panas*, two hundred; and in this manner the amount of the fine should be increased according as the price is (determined to be) higher.



Vîramitrodaya

Yājñavalkya, Verses 247-248

- 5 *Mudrām*, 'seal', i. e. the cover, of that having been exhibited for sale etc., at the time of the sale with that a cover with a seal full of pearls, one who changes it by a sleight of the hand etc. for a pot full of bright pebbles etc., etc. (247-48).

Śûlapâṇi

Yājñavalkya, Verse 248

- 10 For one who misappropriates a valuable vessel or a sealed casket, or artificially prepares saffron etc. and who sells it, the determination of the fine should be made. How should it be made? So the Author says when it is less by a *pañā* the penalty shall be fifty *pañas*; when it is a full *pañā* (the penalty is) hundred *pañas*. For two *pañas*, two hundred. For a value exceeding this, the penalty should be made according to the excess.

15 Yājñavalkya, Verse 249

For (traders) combining to maintain a price to the prejudice of labourers and artisans, although knowing the rise or fall of the prices, the fine shall be the highest amercement.

- 20 **Mitâkṣharâ** :—Although knowing the increase or decrease in the market rates as regulated by the king, if traders combine, i. e. join together, and out of greed for profit, maintain another price, which is detrimental to the labourers, *kârūṇam*, such as the washermen and others, or *śilpinām*, the artisans such as painters or sculptors and the like, they shall be fined one thousand *pañas*.

25

Śûlapâṇi

Yājñavalkya, Verse 249

- 30 For grocers fixing a price for the corns etc. without the consent of the king and in a manner which would be oppressive, as also for the artisans and manufacturers for effecting an increase or decrease in the price declared by the king, the penalty should be one thousand *pañas*. Manufacturer, such as the weaver; *S'ilpi*, 'artisan', i. e. sculptor (249).

### Yājñavalkya, Verse 250

For traders combining to obstruct (the sale of) a commodity by (demanding) a wrong price, or for selling it, the fine laid down is the highest amercement.

**Mitākṣharâ** :—Moreover, those traders who combining together, obstruct (the sale of) a commodity arrived from a foreign country by demanding it at a wrong price, **anargheṇa**, i. e. at a lower value, or sell it at a higher price, the highest amercement or fine for these has been laid down by **Manu** and others<sup>1</sup>.

### Vîramitrodaya

#### Yājñavalkya, Verses 249, 250

Of those who fix an inconvenient price i. e. the rate for corns etc. and of the traders who bring about the depreciation or increase of the price fixed by the king, the penalty for these has been stated by the sages to be measured by a thousand *pañās*. So also for those traders obstructing the sale of a valuable commodity by (setting up) a small price, and those who purchase by deceit etc. or those who sell a commodity of small value for a high price, the penalty laid down is the highest amercement (249, 250).

At what price, then, must a commodity be sold? so the Author says

### Yājñavalkya, Verse 251

The sale or purchase should be (conducted) at that price which is fixed by the king; the surplus made therefrom is understood to be the legal profit of traders.

**Mitākṣharâ** :—**Rājani**, by the king, when he is near **sthâpyate yorghaḥ**, whatever price is determined, i. e. is regulated by him, by such a rate the sale and purchase must be made every day. That surplus which has been derived from it is **nissravaḥ**, the surplus made, i. e. the special balance i. e. the surplus over the rate as regulated by the king is the only legal profit of the traders and not the one made from rates determined by their own fancy. A special rule, has, moreover, been indicated by **Manu**<sup>2</sup> in the matter of regulating prices: "Once in (every) five nights, or at the close of each fortnight or month, the king shall settle the prices in the presence of these (i. e. the traders)."

1. 'The meaning which results therefrom is, that a fine is directed for the offence of raising or lowering the market rate fixed by the king. The sage declares that purchase and sale should be conducted 'according to the prices regulated by the Sovereign' (Colebrooke).

2. Ch. VIII. 402, Some editions of **Manu** read पक्षे पक्षेऽथ वा गते—

Vîramitrodaya

Yājñavalkya, Verse 251

- Now with the avoidance of these penalties how can they have their subsistence? So the Author proceeds "by the king etc." That price which has been fixed by the tradesmen in the presence of the king with his sanction, with that price should the sale and purchase be made by the merchants every day. Therefore the residue which would remain from the purchase and sale, *i. e.* the excess part, that alone, should be the source for the subsistence of the tradesmen dealing in profits. Here Manu<sup>1</sup> states a special rule: "Once every five nights, "or at the close of each fortnight or a month, the king should fix the "prices in the presence of these, *i. e.* the traders" (251).

Sûlapâni

Yājñavalkya, Verses 250-251

- 15 Whatever price is fixed by the king, with that alone should the sale and purchase be effected. Whatever is realised by the sale of the articles of merchandise in excess of the original amount has been declared as the small profit for the traders.

Yājñavalkya, Verse 252

- 20 On commodities of one's own country, a trader shall take five per hundred, and ten on those from foreign countries, when he buys and sells again immediately.

- Mitākṣharâ:—Moreover, he who purchases a commodity obtained in his own country and sells it, such a one shall take a profit of five per cent *i. e.* five in one hundred *pañas*. On a commodity, however, obtained from a foreign country, he should take as his profit, ten *pañas* on an original cost of one hundred *pañas*, (on) a commodity, the sale of which is brought about immediately on the day of purchase.

- 30 But he again, who sells at a subsequent time, for such a one, a greater profit shall be allowed as a longer time elapses. And thus, the market prices of commodities of his own country should be so regulated by the king that there may be a profit of five *pañas* in a hundred *pañas* on the regulated price.

Sûlapâni

Yājñavalkya, Verse 252

- 35 For an article of merchandise in one's own country the trader should recover five per cent. as profit, while for an article imported from another country, ten per cent. provided the sale and purchase occur immediately; in the case of delay, there is no rule (252).

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The Author mentions the principle for determining the price of a foreign commodity

Yājñavalkya, Verse 253

Adding the incidental charges to the cost of the commodity, let the price be fixed which shall be equitable both to the buyer and the seller.

Mitākṣharā :—On a commodity arriving from another country, after calculating the charges which are incurred for carrying it from and back to the foreign<sup>1</sup> country, as also the customs and other dues, and adding these to the original cost of the commodity, the price should be determined by the King<sup>2</sup> which will be equitable both to the buyer and the seller, so that a profit of ten per cent may be made.

Vīramitrodaya

Of what kind, from what commodity is this residue? So the Author says "In one's country etc."

Yājñavalkya, Verses 252-53

If after purchasing in one's own country only it is sold, there, for a commodity of the value of hundred *panas*, five *panas*; but for having purchased in another country and brought in one's own country if a commodity is sold, there the trader shall take ten *panas* as the profit if he sells the commodity not after a long interval after its purchase. By reason of its being in a distant country when there is long delay for a sale, having added the expenses for the importation, preservation etc. of the commodity and thus adding to the original cost on a hundred of that by regard to the difference due to the native and foreign country, the king should fix a price which should be fifteen per cent in excess, and which should benefit the seller and the purchaser. By the use of the word *cha* are added the citizens also; by the use of the word *eva*, 'only', is excluded (the possibility of) neglect by the king in the matter of fixing the price. Here other penalties in regard to other subject-matters are not stated for fear of adding to the bulk of the book.

Thus ends the Chapter on Sâhasas.

Sûlapâṇi

Yājñavalkya, Verse 253

For an article of merchandise which has been received from a mountainous and distant country, whatever has been incurred as expenditure etc. the price of that should be determined by thousand-folding the same in such a manner that it may not be detrimental to the vendor or the purchaser (253).

1. In this instance, another or a foreign country should not be assumed by a difference in language or the intervention of mountains or rivers, but by the actual distance by *Yojanas*.

2. Cf. Manu Ch. VIII. 401. where a general rule has been laid down,

## CHAPTER XXI

## Non-delivery after Sale

- Having finished a topic which incidentally arose, the Author now introduces the chapter on Non-delivery after Sale. Its characteristics, moreover, have been stated by Nārada<sup>1</sup>: “When a commodity has been sold for a price and is not delivered to the purchaser, it is termed “Non-delivery of a sold chattel—a Title of Law.” There, after mentioning the two-fold division of vendible things according as they are movable or immovable, its six-fold character has been demonstrated by the same Author<sup>2</sup>: “In this world vendible property is of two kinds, movable and “immovable ( 2 ). The rule regarding delivery and<sup>3</sup> non-delivery of “merchandise is declared six-fold by the learned *viz.* ( What is sold ) “by tale, by weight, by measure, according to work, according to its “beauty, and according to its splendour ( 3 ).” ‘By tale’ as the betel-nut or the like. ‘By weight’ such as gold, musk, saffron and the like. ‘By measure’ such as rice or the like. ‘According to work’ such as a horse, buffalo and the like as determined by the burden carried or the milk yielded by them. ‘According to its beauty’ such as a prostitute &c. ‘According to its splendour’ *i. e.* according to their lustre such as an emerald, a ruby or the like.

The Author mentions a fine for one who having sold a merchandise of ( any of ) these six kinds, does not deliver it

Yājñavalkya, Verse 254

- He who, having received the price of a thing sold, does not, however, deliver it to the buyer, shall be compelled to deliver it together with interest; or with the foreign profit, to one who has come from a foreign country.

- Mitākṣharâ:—That merchandise of which the price has been received by the seller is *gr̥hitamūlyam* one, *the price of which was received*, if the seller does not deliver such a thing on demand to a local purchaser, and if that merchandise bore a higher price at the time of the sale, but is obtainable at a low price at another time, then the seller shall be compelled to pay to the buyer the article together with the excess in value of the commodity—whether movable or immovable—over the one to which it is reduced. When there is no difference in

1. Ch. VIII. 1.

2. Ch. VIII. 2-3.

3. *Dāna* is delivery and *Ādāna* is non-delivery, Dr. Jolly translates it as gift and receipt, and so does Colebrooke III. 3. 3.

the price of the commodity and its original price, but the commodity retains the same price at which it was agreed to be sold at the time of the (contract of) sale, the seller shall be compelled to make over to the buyer the merchandise itself together with the profit which a seller may have made *e. g.* two, three, or the like per hundred as already discussed, or otherwise according to the option of the seller. As says Nârada<sup>1</sup>: "If there has been a fall in the market value of the article in question, the purchaser shall receive both the article itself together with the difference in value. This law applies to those who are inhabitants of the same place; but to those who travel abroad, the profit arising from (trading in) foreign countries shall be made over (as well)."

When, however, on account of a rise in the price of the commodity, there is a diminution in (the value of) the thing, then the seller must be compelled to deliver over the thing itself together with the charges for enjoyment of the thing itself such as in the case of cloth, for wearing it, and in the case of a house, for comfortably dwelling in it, and the like. As says Nârada<sup>2</sup>: "If a man sells property for a certain price, and does not hand it over to the purchaser, he shall have to pay its produce, if it is immovable, or the profits arising from it, if it is movable property."

Possession by the seller is declared a decrease, as the thing loses in value from the point of view of the buyer. The decrease (here comprehended) is not any destruction of property such as the demolition of a wall, or the like; since that has already been mentioned in<sup>3</sup>: "If the article should have been injured, or destroyed by fire, or carried off, the loss shall be (charged) to the seller alone, as he did not deliver (it) after it had been sold (by him)."

When, however, such a purchaser has come from a foreign country for taking away the merchandise, then, the seller must be compelled to deliver over the thing to the buyer together with such profit as might have been made by one taking the merchandise and selling it in a foreign country.

This rule, however, regarding the delivery of a thing purchased shall be observed in the absence of a rescission. When, however, there is a rescission, the rule must be followed as laid down by Manu<sup>4</sup> in: "If (anybody), after buying or selling anything &c."

## Śûlapâṇi

## Yājñavalkya, Verse 254

He who does not deliver an article of merchandise of which the price had been received by him, such a one shall be compelled to pay to the purchaser the price together with the interest, if that is received from the country. If, however, it was received from another country then he shall be compelled to pay together with the profit thereon. Viṣṇu' says: "One who having received the price of a thing sold, does not deliver i.e. does not give to the purchaser, such a one shall be compelled to pay to him together with interest, and he should be punished by the King with hundred panas" (254).

## Yājñavalkya, Verse 255

A commodity, even if sold once may be sold again, if the first purchaser do not take it; and if there is loss on account of the fault of the purchaser, the same shall be his alone.

Mitākṣharâ:—Moreover, when, however, the purchaser, repenting of his purchase, does not desire to take delivery of the commodity sold, then the commodity even when sold (once) may be sold to any other. Also, when the purchaser does not accept (delivery of) a thing when (it was) offered by the seller, and if the commodity is destroyed by act of God or of the king, then the loss will be of the purchaser alone; since the loss happens through the fault of the purchaser in refusing to accept the commodity.

## Śûlapâṇi

## Yājñavalkya, Verse 255

When an article has been sold and the first purchaser does not accept, it should be sold (again). If there is any depreciation through the fault of the purchaser then that is of the purchaser himself (255).

## Yājñavalkya, Verse 256

Should a commodity be injured by act of God or of the king, the loss shall be of the seller alone, if he did not deliver it on a demand.

Mitākṣharâ:—Moreover, when, however, the seller does not deliver a thing even upon request by the buyer, even when he has not rescinded (the sale), and it is injured by an act of God or of the king, then such loss is of the seller alone. Therefore, another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer.



Śûlapâṇi

Yājñavalkya, Verse 256

If through the act of king or God any blemish occurs in the article any depreciation that follows is of the seller only, if it is not delivered to the purchaser who was asking for it. It follows, therefore, that if the purchaser does not accept when it is being delivered, then the fault is of the purchaser (256).

5

Yājñavalkya, Verse 257

If a man sell a commodity to one, when it had already been sold to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

10

Mitākṣharâ:—Again, he who sells or delivers a thing to one when it had already been sold to another, and even without rescinding ( the first sale ), or sells a commodity which has a flaw, by patching up the flaw; then a fine double in amount of the price of the commodity must be understood. Nârada<sup>1</sup> also has stated a special rule in such a case: "When a man sells something to one person "and delivers it to another person, he shall be compelled to pay "double the amount, and also a fine of an equal amount ( 8 ) When "a man exhibits a faultless thing, but sells one having a flaw, such a "one shall be compelled to pay twice its value, and also an equal "amount as fine (7)."

15

20

The whole of this law is to be observed in the case of a commodity, for which a price has been paid. In the case of a commodity, however, for which no price has been paid, excepting such special agreement as may have been entered into under the terms of the merely verbal negotiations between the seller and the buyer, there is no liability for entering ( into a new transaction ) or receding ( from one already entered into ). As says Nârada<sup>2</sup>: "Thus has the law "been declared with regard to a merchandise for which the price "has been tendered ; when the price has not been tendered, there is no "rescission<sup>3</sup> to be imputed to the vendor, except in the case of a "special agreement."

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1. Ch. VIII. 8-7.

2. Ch. VIII. 10.

3. Dr. Jolly's edition reads अविक्रय. This appears to be a better reading. But all the editions of the Mitākṣharâ read अविक्रयः

**Vīramitrodaya**

Now "when a commodity has been sold for a price and is not  
"delivered to the purchaser, it is termed 'Non-delivery after sale.' A  
"title of law," thus characterized by Nārada<sup>1</sup> the Author treats of  
5 the title of law called 'Non-delivery after sale'

**Yājñavalkya, Verses 254-57**

When from the purchaser the price has been received by the seller  
himself, if he does not deliver the same to the purchaser, then he should  
10 be compelled to deliver the commodity to him together with the increase.  
The increase has been stated by Nārada<sup>2</sup>: "If a man sells property for a  
"certain price and does not deliver it to the purchaser, he shall pay its  
"depreciation if it is immovable, or the profits if it is a movable  
"property." *Kṣhayam*, 'depreciation' i.e. (as for) possession; profits  
such as service etc.

15 By the use of the word *eva*, 'only', ( however ) is understood to be  
in the absence of a repentance by the purchaser. On a repentance  
by him, however, the rule laid down by Manu<sup>3</sup> should be followed :  
"If anybody in this world after buying or selling anything repent  
(of the bargain ), he may give or take back that commodity within  
20 "ten days." Nārada<sup>4</sup> : "If there is a fall in the market value itself of the  
"article, the purchaser shall receive both the article itself and the  
"difference in value. This law applies to those who are inhabitants of  
"the same place; but to those who travel abroad, the profits arising from  
"(trading in) foreign countries shall be made over." Viṣṇu<sup>5</sup> : "He who  
25 "does not deliver to the purchaser a commodity the price of which has  
"been received by him, shall be compelled to deliver it with interest,  
"and he shall be fined hundred paṇas by the king" (254).

When even after the commodity was sold, it was not taken over by  
the first purchaser on account of his change of mind during the interval  
30 of inspection or after that time, while that commodity is being sold, if  
there is a depreciation in the value of the commodity on account of a  
defect occurring in it by reason of the fault of the purchaser not properly  
inspecting it or by an act of God or of the king, then that depreciation  
will be of the purchaser only. If when the purchaser  
35 demanded it and the seller did not deliver, then the loss is of the seller  
himself. This is the meaning. The word *api* is used in the sense

1. Ch. VIII. 1.      2. Ch. VIII. 4.      3. Ch. VIII. 222.  
4. Ch. VIII. 5.      5. Ch. V. 1-2 p. 126-27.

of opposition. The use of the word *eva*, 'only', twice, discriminates the purchaser and the seller; by the use of the word *hi* the Author intends the cause for the depreciation.

Without expressing disagreement, if the first purchaser through confusion etc. does not take delivery, if the commodity is delivered in the hands of another after the acceptance of the price, or if the commodity having a fault has been sold as faultless, there the punishment shall be double of the price of both the commodities; by the use of the word *cha* is added that to the purchaser also double that of the price should be given. That says Nārada<sup>1</sup>: "He who after having sold to "one, delivers it to another shall be compelled to pay double of that "amount and also a fine of an equal amount (6). This law has thus been "declared with regard to a merchandise for which a price has been paid; "where the price has not been tendered, there is no rescission to be "imputed to the seller except in the case of a special agreement (10)". By the use of the word *tu*, 'however', is excluded (a transaction) where the price has not been received, but the sale has been only by a word of mouth (254-57).

### Śūlapāṇi

#### Yājñavalkya, Verse 257

When an article has been sold to one, and it is again sold to another as faultless, although faulty, then double the amount of the price shall be the penalty (257).

Rescission of a sale has (thus) been described; the characteristics of a rescission of a purchase, have already been discussed before. Now the Author mentions a rule which is common to both of these

#### Yājñavalkya, Verse 258

No rescission of a sale of commodities shall be made by a trader unless he was<sup>2</sup> ignorant of the excessive or diminished rates (therefor). He who does (rescind) shall be liable to pay a fine of a sixth part.

**Mitākṣharā** :—Nānuṣayaḥ kāryaḥ, no rescission (of a purchase) shall be made by a purchaser, who does not perceive any excess in the price charged, or the commodity, upon a valuation of the same subsequent to the time of the purchase, but at the rates prevailing at the time

1. Ch. VIII. 6, 10.

2. It seems Mr. Colebrookes reads this verse in Yājñavalkya differently. His reading would appear to be *प्रयानमिज्जानता* since he translates as "who well knows the profit and loss &c." See Colebrooke Dig. I, p. 68.

of the purchase ; nor shall the contract be rescinded by the seller who does not perceive any loss in the commodity consequent upon its excessive value (in the market).

If, however, there is a cognition of increase or decrease, that the purchaser or seller or both may rescind follows by the negative inference.

The time for rescission has, however, been mentioned by Nārada<sup>1</sup>:  
 “When a purchaser, after having purchased an article for a (certain)  
 “price, considers that he has made a bad bargain, he may return it to  
 “the vendor on the same day, in an undamaged condition (2). When  
 10 “the purchaser returns it on the second day, the seller shall deduct  
 “a thirtieth part of the price ; twice as much on the third day ; after  
 “that time, the thing belongs to the purchaser alone.”

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In the case, moreover, of a sale or purchase made without an examination (of the commodity), the time for rescinding the contract  
 15 on account of a defect in the commodity has already been indicated in the text<sup>2</sup>: “Ten, one, five, seven days &c.” Therefore from this text it may be inferred that a knowledge of the increase or decrease in the value may serve as a reason for a rescission. Moreover, from the interval for testing a commodity purchased may be inferred the  
 20 reason for a rescission on the ground of defects in the commodity. Therefore, whoever makes a rescission in the absence of the three reasons—*viz.* a defect in the commodity, or an increase or decrease in its value—even within the time allowed for rescinding, then he shall be fined a sixth part of the (value of the) commodity. The same  
 25 fine shall be inflicted on one who makes a rescission after the lapse of the interval allowed for a rescission, even though there be (good) reason for a rescission.<sup>3</sup>

1. Ch. IX. 2-3. C/o also Yājñ: II. 177. p. 1202 above.

2. Of Yājñavalkya II. 177 see page 1202 above. Bālabhāṭṭa attributes it to Manu—apparently a mistake.

3. So according to Vijñāneśvara there are only three main reasons for rescinding a contract of sale or purchase *viz.* (1) A defect in the commodity, or (2) advantage or (3) loss occurring on account of the ignorance of actual rates prevailing in the market at the time of the sale. These are the only reasons. And secondly, the rescission on account of these reasons must be made within the time prescribed. So that a rescission shall not be allowed if made after the lapse of the interval prescribed for a particular case.

In the case of things which do not suffer by enjoyment, and which have a fixed value, the fine for one making a rescission after the time for rescission is over, shall be imposed in accordance with the rule laid down by **Manu**<sup>1</sup>: “But after (the lapse of) ten days he  
“may neither give it, nor cause it to be given (back); both he who  
“takes it (back), as well as he who gives it (back), shall be fined  
“by the king six hundred *panas*.” 5

Thus ends the chapter called **Non-delivery after sale**.

#### Vîramitrodaya

Now of the rescission of purchase which has been stated before generally, the Author mentions the special rule in point in regard to non-delivery after sale 10

#### Yājñavalkya, Verse 258

A rescission should not be made by a trader when he has purchased without knowing the depreciation of the value of the commodity. Having sold without knowing the appreciation in the price of the commodity, a rescission should not be made. Thus one who makes a rescission even without knowing, makes himself amenable for penalty for a sixth of the price of the commodity. By the use of the word *cha*, ‘also’, is meant that a rescission may be made upon a discovery of the fall or rise. Nor is there the text ‘having sold etc.’ included. 15 20

**Br̥haspati**<sup>2</sup>: “What has been sold by one intoxicated, or insane, or “at a very low price, or under the impulse of fear,<sup>3</sup> or by one not his “own master, shall be relinquished by him (the purchaser), or (the seller) “may recover it back.” The connection is that the purchaser shall give it up, and the seller shall take it back. 25

Thus ends in the commentary on Yājñavalkya the Chapter on  
**Non-delivery after sale.**

#### Sûlpâṇi

#### Yājñavalkya, Verse 258

When merchants make purchases without ascertaining the appreciation or depreciation of the articles of sale, a rescission should not be made. When one makes a rescission, he shall be liable to pay as a penalty one-sixth part of the price of the articles sold. **Nârada**<sup>4</sup> states a special rule (see above Mitâksharâ p. 1302 l. 7-12.) (258). 30 35

1. Ch. VIII. 223.

2. XVIII. 5.

3. The Benares edition reads अवेन वा; while Dr. Jolly in his Extracts of Br̥haspati had, it appears, the reading अयात् which is better and therefore followed and is accepted in the translation.

4. Ch. IX. 2-3.

## CHAPTER XXII.

## Trading by Partnership.

Now is being described the Title of Law called 'Trading in Partnership.'

5

## Yājñavalkya, Verse 259

Among traders carrying on a business in partnership with a view to gain, the profit and loss shall be according to the ( contribution of each to the) stock, or according as was determined by special agreement.

10

Mitākṣharâ:—Samavâyah, *partnership*, is an agreement<sup>1</sup> by which several persons agree to do any business together. Under such an agreement, for such work as is done by each of the people, such as traders, actors, dancers and like others, working with a view to gain, the share of *profit or loss*, *lābhālābhau*, i. e. of an increase or decrease, will be determined by regard to the contribution of each i. e. according to the quantity of stock for the use of the trade supplied by each. Or, the shares (in the profit and loss) shall be determined as fixed upon by any agreement or compact ( between the parties ), such as, having regard to the chief qualities and capacity in each, such a one should be entitled to two shares, such another one share, and the like.

15

20

## Vîramitrodaya

The Author now begins the title of law known as "Trading by Partnership"

## Yājñavalkya, Verse 259

25

Of the traders combining together for profit and engaging in a transaction, the profit or loss shall be (determined) according to (the contribution of) the original amount of money. Or if the profit and loss have been the subject of a special agreement, then these shall be according to such arrangement in that manner in the case of traders, actors etc.(259).

30

## Śûlapâṇi

## Yājñavalkya, Verse 259

Of tradesmen engaging in trade by a combination with a view to profit, the profit or loss should be understood to be according to the share of the capital of each; or the same should be determined as may have been previously agreed to. (259).

1. An agreement thus: 'We will all do this business together.'

### Yājñavalkya, Verse 260

Whatever is forbidden or not sanctioned, as also what has been injured through negligence, such property he shall make good; but he shall be entitled to a tenth part of the property preserved from misfortune.

**Mitākṣharâ** :—Again, among those trading as partners, if on account of the action of some one against a prohibition 'that a certain commodity is not to be dealt with in a particular manner,' any property **nâsitam**, is injured, similarly by doing something **anâdiṣṭam**, not sanctioned, i.e. not allowed, as also if any thing is injured **pramâdât**, through negligence, i.e. on account of want of competence, such a one shall make good that commodity to the traders. 5 10

He, moreover, from among them, who preserves any merchandise from any misfortune proceeding from either the king or the like, such a one obtains a tenth portion of the merchandise thus protected.

#### Vîramitrodaya

Among the company when the capital is lost or preserved by one, the Author states a rule 15

#### Yājñavalkya, Verse 260

Of traders trading in partnership together when from the merchandise any commodity has been the subject of a special direction that it should not be dealt with in a particular manner, or "My commodity should not be dealt with in this manner" thus it has been prohibited, or "it should be dealt with in this manner" when it has thus been specially directed, when the commodity has been lost by one through ignorance, such a one should give that commodity. He, moreover, who being surrounded by a multitude, preserves it alone from attacks by robbers or the like shall get the tenth part of the commodity. This is the meaning. By the first use of the word *cha* it is intended that if the commodity is destroyed through the mistake of all, then the loss is to be determined proportionately to the amount of their contribution; by the second use of the word *cha* it is added that upon the death of one who preserves the property his son gets the tenth part; vide the text of Nârada<sup>1</sup>: "Should one of the partners die the heirs to his "property shall get his share" (260). 20 25 30

#### Sûlapâni

#### Yājñavalkya, Verse 260

One engaging in what is prohibited and not permitted and whatever money has been lost through carelessness, such a one should recoup the loss. From property saved from a misfortune, such as the attack of robbers or the like, or from the robbers, he may take a tenth part (260). 35 40



## Yājñavalkya, Verse 261

The king shall take as a tax a twentieth share of the price fixed (by him). A Commodity which has been specially reserved as also that which is worthy of a king shall, if sold, belong to the king.

- 5 Mitâkṣharâ :—For fixing the price of a commodity *e.g.* such an article of merchandise shall have such a price *i.e.* by reason of the same being determined upon by the king, he (*i.e.* the king) shall receive a twentieth part of the price as a tax. That, moreover, which **vyâsiddham**, *had been specially reserved, i.e.* prohibited by the king from  
10 being sold anywhere else, also that which is worthy of the king, such as jewels, rubies and the like, even when forbidden, if the same be sold out of greed for profit without informing the king, **tadrâjagâmi**, *the same shall belong to the king, i.e.* all that merchandise the king shall appropriate without (regard to) the payment of the price.

15

## Vîramitrodaya

On the occasion of the treatment of the right to a share, the Author mentions the king's right to a share

## Yājñavalkya, Verse 261

- 20 By reason of his fixing the price the king shall take a twentieth part, the meaning is that the king shall take from the price. Some, however, hold that the king should not take a share, but the commodity itself or its price in entirety should be taken by the king. *Vyâsiddham*, 'specially reserved', *i.e.* 'this must not be sold here', a commodity which has been thus prohibited by the king but has been also there.  
25 *Rajayogyam cha*, 'also that which is worthy of a king', such as a rouge elephant or the like; although not prohibited have been sold elsewhere without the permission of the king, *tad râjagâmi*, 'that goes to the king'; may be appropriated by the king *i.e.* even without his paying the price (261).

30

## Śûlapâṇi

## Yājñavalkya, Verse 261

- On account of the determination of the price, the king may take a twentieth part of the price as his tax. Such article, moreover, as may have been prohibited by the king as for sale (in the market) on account of  
35 its extraordinary character, as also such as is fit for the king as *e.g.* a white chowry, such article even though sold, is of the king (261).

Yājñavalkya, Verse 262

He who falsely declares the quantity, who avoids a tolling office, shall be compelled to pay eight times, as also he who purchases or sells fraudulently.

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**Mitâkṣharâ:**—That trader, again, who conceals the ( real ) quantity of a commodity with the object of defrauding the customs ( officers ), or skulks away from the tolling offices ; as also he who either purchases or sells an article which is the subject of a dispute ( as to ) 'whether it belongs to this or it is of that man', all these shall be fined eight times the amount of the value of the commodity.

5

Vîramitrodaya

The Author mentions the penalty for one who does not pay to the king and is adverse

10

Yājñavalkya, Verse 262

One who with a view to evade the payment of the tax declares falsely the measure in quantity of the merchandise such as cloth, pearls, etc., or avoiding the excise officer saying 'this has been deposited by me here; it is neither sold nor purchased,' and thus causing deception, a trader who thus effects a sale or purchase shall be compelled to pay eight times the price of the commodity as penalty. By the use of the word *cha* twice, the Author indicates severally as the cause for the infliction of a fine upon those who deceitfully carry on sales or purchase indicated by the word ending in the present participle termination (262).

15

20

Sûlapâṇi

Yājñavalkya, Verse 262

He who through covetousness declares falsely at the excise office the quantity of an article for a sale, and one who without paying the toll sneaks off from the excise office, he also who with a view to defraud the king at the time of the sale ultimately fraudulently makes purchases or sales, such a one should be compelled to pay as penalty an eightfold of the money defrauded. When, moreover, without even going to the toll office, he goes elsewhere by another road, then the entire property should be confiscated. As says **Viṣṇu**<sup>1</sup>: "One who evades the toll office, shall incur the forfeiture of the entirety" ( 262 ).

25

30

## Yājñavalkya, Verse 263

A marine officer levying a land cess, shall be compelled to pay ten *panas*. The same shall be (the fine) for not inviting the Brāhmaṇas and Prātivēśyas.

- 5 **Mitākṣharâ** :—And again, customs dues are two-fold, *viz.* one levied on land, and another levied on water. Of these, the **tax** levied on land has been mentioned in the **text**<sup>1</sup>: “The king shall take as a tax the twentieth “share of the price fixed.” The tax levied on water, however, has been mentioned in the text of **Manu**<sup>2</sup>: “At a ferry, a conveyance shall be  
10 “made to pay one *paṇa*, a man half a *paṇa*, an animal and  
“also a woman a quarter, and an unloaded man one-half of a  
“quarter (404). Conveyances fully laden with vessels shall be made  
“to pay toll at a ferry according to the substance<sup>3</sup>; empty vessels, as  
“also men without a luggage (shall pay) a trifle (405). But a  
15 “woman who has been pregnant for two months or more, an ascetic,  
“a monk, as also a Brāhmaṇa,<sup>4</sup> students of the Vedas, shall not be  
“made to pay toll at a ferry (407).”

- Here is another special rule<sup>5</sup> applicable even to both kinds of tolls:  
“A toll is never levied on a sum less than a *kārṣhāpaṇa*, it is never levi-  
20 “able on a livelihood gained by art, nor on an infant, nor on a messenger;  
“nor on what has been received as alms, nor on the remains of stolen  
“property, nor on a *S'rotriya*, nor on a hermit, nor on a sacrifice.”

- That, by which a thing is floated is a ferry *e. g.* a boat and the like. One who is commissioned to recover the toll levied on these is  
25 **Tarikāḥ**, a *Marine Officer*. Such a one, when he recovers a toll levied on land shall be fined ten *panas*. *Veśa*, *Veśma* and *Prativēśa* are indicative of one's own house and the (neighbours in its) front or rear. People living in these parts are *Prativēśyas* or people living in the neighbourhood. *Brāhmaṇas* and *Prativēśyas* (joined together) make up  
30 (the compound expression) ‘Brāhmaṇas and Prativēśyas.’ The non-invitation of these on exequial occasions or the like, when they are accomplished by the study of the Vedas and by their (pure) lives, and when he has competence (to invite them)—this itself must be understood to be punishable with ten *panas*.

1. Yājñavalkya II. 261 p. 1306 above. 2. Ch. VIII. 404, 405 and 407.

3. *i. e.* according to the quantity of the goods as well as their value.

4. ब्राह्मणालिङ्गीनो—ब्रह्मचारिणो ब्राह्मणग्रहणं विशेषणम् ।

—मेचातिथिः.

5. See Vasishṭha Ch. XIX. 37. Bāḷambhaṭṭa assigns it to Manu.

**Vīramitrodaya**

Like a trader not paying the tax, a penalty is payable by the officer of the king also when he recovers a tax which is not proper. Intending to lay down this rule the Author states a penalty also for transgressions of a like character

**Yājñavalkya, Verse 263**

*Tarikaḥ*, 'A naval officer', *i.e.* one appointed for the water tax, a "twentieth part of the price fixed" as stated before<sup>1</sup> when he recovers a tax on land, such a one shall be compelled to pay the penalty of ten *panas*.

*Pratīveśa*, is a house in the close vicinity of one's own house; one who does not invite Brāhmaṇas residing there even when there is occasion for an invitation<sup>2</sup> to others shall be compelled to pay also a penalty of ten *panas*. By the use of the word *cha*<sup>3</sup> it is added "if he accepts his invitation." *Manu*<sup>4</sup> states the water tax: "At a ferry, a conveyance shall "be made to pay one *pana*, a man half a *pana*, an animal and a woman, "a quarter; and half of a quarter, an unloaded man. Conveyances fully "laden with vessels shall be made to pay a toll at a ferry according to the "substance. Empty vessels as also men without a luggage a trifle." 'A man' *i.e.* a man carrying a load.

Here there is a special rule even with regard to the two kinds of tolls. A toll is never levied for a sum less than a *Kārṣhāpana*. It is never leviable on a livelihood gained by art, nor on an infant, nor on a messenger, nor on what has been received as alms, nor on the remains of stolen property, nor on a *Śrotriya*, nor on a hermit, nor on a sacrifice (263).

**S'ūlapāṇi**

**Yājñavalkya, Verse 263**

One authorized as a toll officer for the water cess, recovering on land the toll which is to be recovered on water should be compelled to pay ten *panas*, and one not inviting neighbouring Brāhmaṇas on an occasion of feast should similarly be fined ten *panas* (263).

1. See verse 261 p. 1306. above.

2. अन्यनिमंत्रणकार्येऽप्यनिमंत्रयन् and appears to be good. A reading अनिमन्त्रणकार्येऽपि निमन्त्रयन् is the reading in the Benares edition. This is either a mistake in the reading or that appears to be the deliberate opinion of Mitramiśra. This is suggested by the next clause in which the author says नदीयनिमन्त्रणं स्वीकुर्वन्. This view of Mitramiśra appears to be in direct opposition to the text of Yājñavalkya, which says अनिमन्त्रणे 'for not inviting.' While the reading, if correct, would give the converse alternative viz. 'inviting when there is no occasion for it.' This, if the reading is correct, is not proper.

3. There is no *cha* in the original.

4. Ch. V III. 406-7.

The Author mentions a rule regarding the property of a trader dying abroad

Yājñavalkya, Verse 264

If<sup>1</sup> one goes abroad and dies (there), his wealth shall be taken by his  
5 *dâyâdas*, *bândhavas* of his *jñâtis*, or who may have come; and failing these, by the king.

Mitâkṣharâ:—When one of those who trade in partnership goes abroad and dies, then his share, his *dâyâdâḥ* i. e. his sons and other lineal descendants; *bândhavâḥ* i. e. (relations) *ex parte materna*, such as the  
10 maternal uncle and others; his *jñâtayah* i. e. his Sapiṇḍa relations other than his lineal descendants; or *who may have come*, *âgatâḥ* i. e. such of the members of the joint trading partnership as may have returned from the country abroad; (these) shall take. *Failing these*, *tair vinâ*, i. e. in the absence of these *viz.* the *dâyâdas* and others, the king shall take.

15 By the use of the word *vâ*, 'or', the Author indicates the uncertain<sup>2</sup> nature of the right of the *dâyâdas* and others to succeed. The rule as to the order of succession, however, must be understood here to be the same as that propounded in the text<sup>3</sup>: "The wife, the daughter &c."<sup>4</sup>

20 Among merchants also, he who is competent to offer the funeral oblation and pay the debts and do similar acts shall take. If there is no distinction as to the capacity (for doing the above), all the merchants trading together in union shall take after dividing. In the absence of these also, after waiting for the appearance of the *dâyâdas* and others for ten years, and on their non-appearance, the king may take it himself.

25 All this has been made clear by Nârada<sup>5</sup>: "Should one of the partners die, his *dâyâdas* shall get his share (7). In the absence of the *dâyâdas*, any one (of the partners), if all are equally competent. "On failure of these, he shall keep it well guarded for ten years (17). "When such property without an owner, and unclaimed by a *dâyâda*  
30 "has been preserved for ten years, the king may then take it over to himself. Thus, the law will not be violated."

1. The whole of this passage has been translated and referred to by Messrs. West and Bahler in their Hindu Law at a p. 135 sqq; and in *Sakrabhai vs Maganlal* 26 Bom. 206 (F. B.) at pp. 218-219.

2. वैकल्पिक *Vaikalpika*—optional. Contingent.

3. Yājñavalkya II. 135 & 136. See p. 1065 above.

4. The subject of that text is the negation of the pupil, Co-student Brâhmana and the affirmation of the right of the trader.

5. Ch. III. 7, 17-18.

**Vîramitrodaya**

If among men trading by partnership one dies, then by whom should his share be taken ? So the Author says

**Yājñavalkya, Verse 264**

While one trading as a partner dies, his share his sons and the rest, his mother's sister's sons and the like of his sapiṇḍas who have gone there shall take the property according to the right. By the word *vā*, 'or', the alternative choice as well as the relative priority are included. Otherwise the whole goes to the king (264).

5

**Śûlapâṇi**

**Yājñavalkya, Verse 264**

Among persons trading by partnership, if one dies in another country, his property, his sons etc., in their absence, uncles etc., in their absence, kindred, and in their absence—except in the case of the property of a Brâhmana—the king, shall take (264).

10

15

**Yājñavalkya, Verse 265 (1)**

A man of crooked ways let the other partners expel without profit; one unable (himself) may have it done by another.

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**Mitākṣharâ:**—Moreover, *jihmaḥ*, a man of crooked ways, i.e. a cheat, such a one, the other partners, *nirgatalâbham tyajeyuḥ*, should deprive of all profit and expel, i.e. deprive. He, moreover, among partners carrying on a joint trading business who *aśaktaḥ*, is unable to supervise the vessels of merchandise and do other like acts, such a one *kârayet*, may cause his own duty, such as that of conveying the goods of trade, or supervise the accounts of the receipts and debits relating thereto and like other acts *anyena*, by another.

20

25

The Author extends the law (relating to partnership) among traders as stated before, to priests officiating at a sacrifice and the like others

**Yājñavalkya, Verse 265 (2).**

30

By this has (also) been stated the law regarding officiating priests at sacrifices, husbandmen, and artisans.

**Mitākṣharâ:—Anena**, by this, i. e. by the statement of the rule<sup>1</sup> regarding traders viz. “the profit and loss shall be according to the stock &c.”; **ṛtwijām**, regarding officiating priests at sacrifices such as the *Hotar* and others; the husbandmen, as also the actors, dancers and others maintaining themselves on arts, **vidbiḥ**, the law, i.e. the rule of conduct **ākhyâtaḥ**, has been stated.

Even there, a special rule has been stated by **Manu**<sup>2</sup> regarding the distribution of the property of priests: “Among all (the priests) officiating at<sup>3</sup> a sacrifice, those (first four who are) entitled to a half “(*Ardhinaḥ*) are the first (to receive); the next (four), one half of that; the set entitled to a third share, one-third; and those entitled “to a fourth, a quarter.” The meaning of this passage is this: under the text “in a *Jyotiṣṭoma*<sup>4</sup> sacrifice, they shall endow it with a “hundred”, a hundred cows have been enjoined as an endowment for

1. Yājñavalkya II. 259 see p. 1304 above.

2. Ch. VIII. 210.

3. The principal priests officiating at a sacrifice who are called *Rtwiks* are sixteen in number distributed under four classes, each class having four members.

(1) The first class includes those who are entitled to a half of the entire *Dakṣhiṇâ*, and are known as the *Ardhinaḥ*.

(2) The members of the second class are entitled to a half of the first, and hence are known as *Tadardhinaḥ*.

(3) The third class are entitled to a third of the first class, and are called *Trīyinaḥ*.

(4) The fourth class are entitled to a quarter of the first class, and are known as *Pâdinaḥ*.

Although one hundred cows are considered as a proper *Dakṣhiṇâ* for a sacrifice, still to make the whole distribution commensurate, 96 is the number chosen (see *Amara* I. 3. 16) so that the first class take 48 cows, the second class 24, the third 16, and the fourth, 12, thus making up the total of 100 cows. This is one way of distribution and has been expounded in the text of the *Mitākṣharâ*. Another way of distribution is suggested by some e. g. by *Nârada*, according to which the whole is divided into 25 shares and the several classes shall receive 12, 6, 4 and 3 shares each respectively, a mode which, it will be seen, only defects in the method of working out the figures, but yields the same result.

4. *Jyotiṣṭoma* is a Soma sacrifice and is considered as the type of a whole class of sacrificial ceremonies. At this sacrifice sixteen officiating priests are required by law, and these are grouped into four classes, each class having again four priests in it as described in the note above, and in the text of the *Mitākṣharâ*.



the sacrifice as indicative of respect to the *ṛtviks* or priests officiating at the sacrifice. The *ṛtvijās*, moreover, are sixteen in number *viz.* the *Hotâ* and others. There, in answer to the question, what person is entitled to what share? the rule in the present text is laid down. Of all the sixteen priests officiating at a sacrifice those who are the chief *viz.* the *Hotâ*, *Adhvaryuh*, *Brahmâ* and *Udgâtâ*, these are entitled to a half of the hundred cows *i. e.* equal to forty-eight cows, to make the division complete into entire numbers<sup>2</sup>. Those next in order *i. e.* the *Maitrâvaruṇah*, *Pratiprasthâtâ*, *Brâhmaṇâcheḥâmsî*, and *Prastotâ* are entitled to a half of that *i. e.* half of the principal share *i. e.* twenty-four (cows). Those, moreover, who are entitled to a third *viz.* the *Achchhâvâk*, *Neṣṭâ*, *Āgnîdhra* and *Pratihartâ* these being entitled to a third *i. e.* a third of the principal share, shall take a third *i. e.* sixteen cows. Those indeed, who are entitled to a quarter *viz.* the *Grāvastud*, *Unnetâ*, *Potâ* and *Subrahmanyah*, these shall take what amounts to a fourth part of the principal share *i. e.* twelve cows.

Indeed how can this rule as to shares prevail? There is here neither a compact (to that effect), nor a combination of capital, nor any express text, under which there may be a rule as to the shares. And under the **maxim**<sup>1</sup> of law *viz.* "In the absence of a special rule, the shares shall be equal," it is proper that all shall be entitled to equal shares or proportionately to their labour.

Here the answer is: In the *Dvâdasâha*<sup>2</sup> sacrifice, which is only a variant of the principal sacrifice called *Jyotiṣṭoma*, it is not proper to suppose that (the recognition of) the *Ardhinas*, *Trîṇyinas* and *Pâdinas* is a mere repetition of something

1. समं स्वादश्रुतत्वात्, Jaimini X. III. 53. Thirteenth Adhikaraṇa. See note above. The relative proportion of the shares of the several classes mentioned in the text will not be maintained if 100 be taken as the total number in relation to which the half &c. is to be determined. Moreover, according to the lexicon *Amara* (I. 3. 16) the word *ardha* 'half' when in the masculine gender is used generally to indicate 'a portion', and not a precise half. Thus 48 is chosen as the figure for the first class and then the numbers 24, 16 and 12 respectively are deduced by the method described above.

2. *Dvâdasâha*—is an offshoot of the principal sacrifice called *Jyotiṣṭoma*, which is called the *Prakṛti*, *i. e.* the basic sacrifice, as opposed to a *Vikṛti*, which means a variant of the base, with slight variations as to details.

already established, if in the principal sacrifice, the *Maitrâvaruṇa* and the other priests were not entitled to a half, a third, and the fourth shares respectively. Therefore the rule as to (particular) shares as mentioned before (necessarily) follows from the very force of the<sup>1</sup> expressions *Ardhis* &c. used in the Veda. Thus there is no fault.

Thus ends the Chapter in the Law of Partnership..

### Vîramitrodaya

Who indeed will not get is share ? So the Author says

Yājñavalkya, Verse 265 (1)

10 *Jihmah*, 'crooked', i. e. one who by his tricks is instrumental in the non-accomplishment of the business of the partnership such a one they (i.e. the partners) should expel i.e. drive out, without (giving any) profit. The meaning is that if he is unable alone (to do it) then he should have his part performed by another ; but should not practise deceit [265 (1)].

1 *Samâkhyâ*—'name, expression,' one of the six means of proof of the Viniyoga-vidhi, the other five being *Śruti*, *Liṅga*, *Vākya*, *Prakaraṇa* and *Sthâna* (See General Note on the Hindu Law Texts p. IV).

The meaning is this: The objector maintains in the statement of this objection, that the persons to whom the terms viz. *Ardhinas*, *Trītyinas* &c. are applied, are not necessarily entitled to a half, a third, or a fourth respectively, in every other sacrifice also, simply because of the fact that they get those shares in the principal sacrifice of *Jyotiṣṭoma*. This would be justifiable if it were a mere repetition of what had already been established. But no such rule has been established after a proper demonstration, and therefore there is no room for its adoption as a mere repetition (*Anuvâda*). The answer, however, is that it is not as a repetition (*Anuvâda*) of anything established (*Siddha*) that this rule as to shares is being propounded, but that the very force of the expressions viz. *Ardhinas*, &c. used in the Veda carries with it the meaning that the several priests thus indicated are entitled to a half, a third, and a fourth share respectively.

N. B. An *Anuvâda* (अनुवाद) is an explanatory repetition of, or reference to, what is already mentioned.

It is also called उद्देश्य the *subject* of the assertion as opposed to विधेय, the fact or the quality asserted of the subject i.e. the *predicate*, and is to be proved or established. The उद्देश्य is already known or assumed as established, while the विधेय is that to establish the connection of which with the उद्देश्य is the object of the proposition. Thus 'Devadatta is wise;' Here Devadatta is the उद्देश्य or the subject and being already known or assumed as established is from another point of view also an अनुवाद; but 'wisdom' is that which is to be established with reference to Devadatta and is therefore the विधेय. This may be further developed to clarify the above. thus: 'the wise Devadatta is good.' Here Devadatta and his wisdom are known, and his goodness is to be established.

Viramitrodaya

The rule as to profit and loss stated before<sup>1</sup> as the law among the tradesmen, the Author extends in the case of sacrificial priests and others

Yājñavalkya, Verse 265 (2)

Anena, 'by this', i.e. by the statement of the rule as stated before, the law has been stated for the sacrificial priests, such as the *Hotā* etc., for husbandmen i.e. those who carry on agriculture, for artisans, i.e. those who engage in works of art, dancing etc.

Regarding the division of property among the sacrificial priests **Manu**<sup>2</sup> states a special rule: "Among all (the priests officiating at "a sacrifice,) those entitled to a half are the first (to receive); the next "(four) one-half of that; the set entitled to a third share, one-third; and "those entitled to a fourth, a quarter."

It is stated in the Vedic text that in a *Jyotiṣṭoma* sacrifice they shall endow it with a hundred; by this a hundred cows has been enjoined. There, among the sixteen sacrificial priests, those who are the first four, viz. the *Hotā*, *Adhvaryu*, *Brahmā* and *Udgātā* are entitled in the capacity of their first right to a share to a half by less i.e. for these four, forty-eight cows; for the next four viz. *Maitrāvaruṇa*, *Pratipras-thātā*, *Brāhmaṇāchchhamṣi*, and *Prastotā* will have half of it i.e. will be entitled to twenty-four as their share; the third viz. *Achchhāvākā*, *Neṣṭā*, *Āgnīdhra* and *Pratihartā*, these four, are sharers for a third i.e. the third part of forty-eight; thus for them sixteen cows. The fourth, moreover, viz. *Grāvastud*, *Unmetā*, *Potā* and *Subrahmaṇyah*, they are the sharers of the fourth of the first part, thus to them twelve cows are to be given. Moreover, in whichever performance whatever quantity has been stated as the *dakṣhiṇā* for that occasion, which he should take, these or all these all of them should take together. Under the text "He gives two golden "lights to the *Adhvaryu*" such *dakṣhiṇās* as for example, for the sacred bath etc. as have been stated in particular connections should be taken by him only, and here there is no division. This is the meaning. **Śaṅkha and Likhita**: "Now after the *Rtwik* has been installed, "after him another should be installed; the *dakṣhiṇā* shall be for him "only who has been installed before. One who is installed after, may "get a trifle, if he stays on for the period. He should bide the time "waiting for the occasion. He should not sacrifice for another. He

1. Verse 259, see page above.

2. Ch. VIII. 211.

- “should finish the sacrifice; having gone away, if one returns, he may  
“get a trifle; if, however, the chief priest goes out, that priest should  
“be fined a hundred coins.” *Manu*<sup>1</sup>: “After the *dakṣhiṇās* have been  
“paid, if he abandons his work he shall obtain his full share and have it  
5 “performed by another” *i.e.* by the son or the like. *Bṛhaspati*<sup>2</sup>: “What-  
“ever has been contributed jointly together, that should be demanded in  
“the same manner. Here if some one does not make a demand such a  
“one loses the profit.” Similarly<sup>3</sup>: “When by the deficiency of one  
10 “partner as to cattle or seeds a loss happens in (the produce of) the field,  
“it must be made good by him.” The meaning is, that on account of  
“whose contribution there is loss to the field by him should it be paid.  
“<sup>4</sup>Also when goldsmiths or other artists operate jointly, upon (a work  
“of) art, they shall share the profits in due proportion corresponding  
“to the nature of their work.” Profits *i.e.* wages. *Kātyāyana*<sup>5</sup>: “If  
15 “artisans *viz.* apprentices, more advanced students, and teachers (are  
“employed together in one undertaking) they shall receive one after  
“another in order one, two, three, and four shares.” *Bṛhaspati*<sup>6</sup>: “The  
“same rule has been declared for dancers by those conversant in law.  
“The expert in *tāla* (beating time) gets a half more, while the singers  
20 “take equal shares.” Half more *i.e.* together with the half.

### Sūlapāṇi

#### Yājñavalkya, Verse 265

- One who is crooked *i.e.* deceitful, the partners should expel by cutting  
off his share. One who is unable to look after a vessel etc. should have  
25 the work done by another.

The law relating to the sacrificial priests, husbandmen, and artisans  
is the same as stated (here) for tradesmen (265).

1. Ch. VIII. 208.

3. Ch. XIV. 25.

5. Ch. V. 632.

2. Ch. XIV. 19.

4. Ch. XIV. 28.

6. Ch. XXIV. 30.

## CHAPTER XXIII

## On Theft.

Now commences the chapter on Theft. Its definition has been  
 Definition of Theft stated by **Manu**<sup>1</sup>: "An offence, which is committed  
 "in the presence, and with violence, would be called 5  
 "*Sâhasa* (*i. e.* robbery); if (it is committed) in the absence, it would be  
 "(called) *Steya* (theft); as also where anything is denied after it has  
 "been committed."<sup>2</sup> *In the presence, i. e.* in the presence of the owner  
 guarding the property, or the king, or the chief officer, or like  
 other. *With violence, i. e.* with a show of criminal force, when a depri- 10  
 vation of another's property or any such similar act is committed, it  
 becomes a *Sâhasa* or robbery. Theft, moreover, is two-fold. 'In  
 'the absence' *i. e.* where, in the absence of the owner of the property,  
 or like another, another's property is taken away by deception, it is  
 called theft. Where, moreover, even when the act is committed in the 15  
 presence, (the actor) denies (it) through fear (saying) 'I did not do this',  
 even that is theft. It has also been said by **Nârada**<sup>3</sup>:  
 PAGE 145\* "Taking away by any of these several means what-  
 "soever, by deception, property of persons asleep,  
 "or disordered in intellect, or intoxicated, sages declare to be theft." 20

There, as the catching of a thief is necessary for punishing him,  
 and as for catching him it is necessary to detect him, the Author  
 presently mentions the means of detecting him

## Yājñavalkya, Verse 266

A thief is arrested by the police-officer, by means of the lost article 25  
 or by the foot-mark; a man once convicted of an offence, as also one who  
 lives in an unknown place.

**Mitākṣharâ**:—One, who is declared by the people 'This is a *thief*'  
**chauro**—such a one should be arrested by the *police-officers, grâhakaih*,  
*i. e.* the state officers, such as the watchmen of the place and the like 30  
 others; or he may be apprehended by means of the *loptra, lost article*,  
*i. e.* the vessel &c. which had been taken away, as (it is) an index of

1. Ch. VIII. 332

2. हस्त is another reading, which is seen in Manu and elsewhere. In that  
 case it would mean, "after it has been taken away."

3. Ch. XI. 17V.

- theft, or by tracing the foot-marks<sup>1</sup> immediately from the day of the loss. He, moreover, **pûrva-karmâparâdhî**, who had once been convicted of an offence, i.e. who had once been found out to have committed a theft, as also one **asuddhawâsakah**, who lives in an unknown place, i.e. one whose
- 5 place of residence is unknown i.e. not well-known, such a one also may be arrested.

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Sûlapâṇi

Yājñavalkya, Verse 266

- 10 By the officers of the police, one who has been pointed out as a thief should be apprehended for theft by a mark or sign of theft; by foot-mark i.e. commencing with the place of loss and in pursuit of the foot-steps of the thieves etc.; or previous acts of robbery, and one who has not established his place of residence ( 266 ).

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Yājñavalkya, Verses 267-268

- 15 Others also may be apprehended on suspicion, such as those who conceal their caste, name, and the like; those who are addicted to gambling, women, and drinking, as also those whose mouth becomes parched up, and voice falters (267);

- 20 Also those who make inquiries about another's wealth and houses, whose movements are mysterious, who having no income spend much, and those who sell lost articles ( 268 ).

**Mitākṣharâ**:—Moreover, not only that those mentioned before should alone be arrested, but **anyepi**, *others also*, by means of marks to be presently mentioned **śaṅkayâ grāhyāḥ**, *may be apprehended on suspicion*.

- 25 'On account of the concealment of the caste', e.g. in the form 'I am not a Sûdra'; on account of the concealment of the name e.g. one saying 'I am not Lapittha.' And by the use of the term **Ādi**—'and the like,' those also should be apprehended, who are exposed by the concealment of their own country, village, family and the like.

- 30 Those who are excessively addicted to gambling, public women, drinking, and other similar vices, as also one who when accosted by the police officers 'whence have you come?' **śuṣhkamukhah**, *has his mouth parched up*, or **bhinnaswaro**, *his voice falters*, then he also may be apprehended. By the use of the plural number are included also those
- 35 whose forehead<sup>1</sup> perspires, and the like others.

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1. See Yājñ. II, 13-15 p. 691 above.

Likewise, those who without any cause make inquiries, 'how much wealth has he?', or 'where is his house?', or those who move about concealing their identity by putting on a disguise; those also who having no income, spend much, as also those who are vendors of lost articles, *i. e.* of the old clothes, broken pots, and similar other articles the owners whereof are not known, all these may be apprehended on suspicion as thieves.

5

Having thus apprehended people having various marks of suspicion about their having committed a theft, a decision as to whether these are thieves or good people should be declared after a minute inquiry, and not by a mere discovery of the signs (of a thief), as it is possible that the marks of (having) the lost article and others may be found even on one who is not a thief, as says **Nârada**<sup>1</sup>: "An article should be determined upon as a lost one by special investigation, *i. e.* when it had dropped down from another's hand, and was discovered on the ground, without any special desire for it, whether it was deposited there by a thief." Similarly: "the untruthful appear as the truthful, likewise, the truthful look as if they were untruthful; thus various aspects (of things) are seen (in this world.); therefore an investigation has been prescribed."

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### Śûlapâṇi

#### Yâjñavalkya, Verse 267

Others also, besides those stated, should be apprehended on suspicion as thieves, by the denial of the name etc. Denial of name such as "I am not such a one"; denial of caste, such as "I am not a Brâhmana." By the use of the word *Ādi*, 'and the 'like', are included the country, the family, the place etc. Similarly those addicted to gambling. In the same manner when asked, "who are you?", "Whence are you coming?" those whose mouths become parched and the voice breaks, these also should be apprehended (267).

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#### Yâjñavalkya, Verse 268

Those who make enquiries about the property of others as also about the houses; those who move about secretly; those who, having no income, incur expenditure; those who dispose of broken ear-rings and the like; (these) should be apprehended on suspicion (268).

35

1. Not found in the published edition of Nârada by Dr. Jolly.



The person thus apprehended on a suspicion of theft must prove himself innocent; so the Author says

**Yājñavalkya, Verse 269**

5 If one who has been apprehended on suspicion do not clear himself from the ( charge of ) theft, the king shall compel him to make good the lost article, and punish him with the penalty for a thief.

10 **Mitākṣharâ:**—If one apprehended on suspicion as a thief does not clear himself from that charge, then he shall be compelled to pay the amount and be liable to corporal punishment as will be presently mentioned. Therefore, he should be cleared either by human<sup>1</sup> proof; or in its absence, by an ordeal.

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Indeed, how can the statement *e. g.* "I am no thief" be possible as evidence in an answer<sup>2</sup> of denial; because it is negative in its nature. The answer is : the admissibility of an affirmative as well as a negative proof in an ordeal has been demonstrated in the text<sup>3</sup> : "Or by consent any one ( of the two ) may perform." Moreover<sup>4</sup>, although human proof is not possible in an answer of a simple denial, still when it is joined to a special plea, which is of an affirmative character, and then becomes 'a combination of a denial and an exception', it makes it possible even for the negative evidence to be adduced *e. g.* if the accused prove by evidence his statement *e. g.* "At 20 "the time of the loss or theft I was in another place", the absence of theft ( by him ) becomes necessarily proved, and thus indeed there follows an exoneration.

25

1. See p. 713 ll. 21-24.

2. See Text p. 7. Translation p. 661, ll. 16-18 above.

3. Of Yājñavalkya II. 96 ( 1 ); See p. 913 above.

4. See pages 664-665 above. The meaning is that a statement in a defence which is merely of a negative character cannot be established by proof positive—*e. g.* when a man says 'I have not committed this theft'—unless he can establish some positive fact which will collaterally support his negative answer, *e. g.* by his setting up an alibi, when he can affirmatively prove that he was in another place at the time when the theft was committed. And for this he will have to file a mixed plea 'combined of a denial and a special plea.'

### Viramitrodaya

The Author treats of the law of theft by a separate chapter. There, first the Author mentions the means of detecting a thief

#### Yājñavalkya, Verses 266-69

*Grāhakaih*, 'by the police officers', *i. e.* by the servants of the king authorized to arrest; or by another, such as the owner of the property etc.; *loptreṇa*, 'by (means of) the lost article,' *i. e.* the vessel etc. taken away, as the sign of theft; or by marks of theft, such as foot-prints etc. at the place of theft, a thief is arrested *i. e.* is determined as having committed a theft. 5

He also who by his past action, such as theft, had a previous conviction; he who has no fixed place of residence, such a one also is apprehended *i. e.* is suspected of having committed a theft (266). 10

Not only these two alone may be apprehended on suspicion, but those addicted to gambling etc., when asked "who are you?" exhibit 'a parched mouth and a hoarse voice'; or those who ask questions about the property or houses of others; those moving about by disguising themselves; those who without any income spend much, as also those who sell old clothes, vessels etc. of unknown owners should be subjected to the suspicion of theft (267-68). 15

When after one is subjected to the suspicion of theft, he does not acquit himself as innocent of theft by witnesses, ordeals etc. then he should be compelled to pay the lost property to the owner, and the king should punish him with the first amercement which is the penalty for a thief, as will be stated hereafter. 20

By the use of the word *atha*, 'thereafter', is meant "after the lost "property is found," the Author suggests that it is only in its absence that the foot-marks etc. should be traced. By the use of the word *cha*, 'and', his fondness for theft, and by the use of the word *taihā*, 'also', is included the determination of the family etc.; the word *eva*, 'also', connected with the first half is meant as a means of determination by the exclusion of any other alternative; by the use of the word *api* 'even', as also the use several times of the word '*cha*' are included those who offer food, shelter etc. to the thief and several others stated in several other *Smṛitis* (266-69). 25

### Śûlapâṇi

#### Yājñavalkya, Verse 269

When one who has been apprehended on suspicion as a thief, if he does not exonerate himself by visible or invisible means, or does not acquit himself, then he should be compelled to pay the stolen property, and should be sentenced with the punishment for a thief (269). 40

The Author mentions the penalty for a thief

**Yājñavalkya, Verse 270 (1)**

Having compelled the thief to restore the property stolen, ( the king ) should punish him by the several ( modes of ) corporal punishments.

- 5 **Mitākṣharâ** :—He, however, who either by means of the tests stated before, or by means other than those, has been proved to have committed a theft, should be compelled to make over to the owner the property **apahṛtam**, *stolen*, either the thing itself or by determining its equivalent (in money), **wiuidhairwadhairghâtayet** and (the king), *should*  
10 *punish him by the several ( modes of ) corporal punishments.*

- This, however, has a reference to articles of a superior quality, in the case of which the punishment of the highest amercement is incurred, and does not hold in the case of the theft of articles of small or middling value such as flowers, clothes &c. Since, on account  
15 of the text of **Nârada**<sup>1</sup> viz: “ The series of punishments, which has been “ordained by the wise for the three kinds of Sâhasas is equally appli-  
“ cable to theft, according as it concerns one of the three species of  
“ articles in their order.” The corporal punishment, which is ordained  
for a Sâhasa of the highest order, has been assigned in the case of articles  
20 of superior value. What, moreover, has been observed by **Vṛddha Manu** in the text : “ The property of these is tainted with sin, since it  
“ has been acquired by illegal means; therefore, the king should inflict  
“ corporal punishments on them, and should not merely inflict a pecu-  
“ niary fine,” that too has a reference to offences of a serious nature.

- 25 The Author mentions an exception in the case of certain thieves

**Yājñavalkya, Verse 270 (2)**

He should brand a Brâhmana, and banish him from his kingdom.

- Mitākṣharâ** :—Moreover, a **Brâhmana** ( who has been found as a )  
thief, the king should not chastise by a corporal punishment, but after  
30 branding him on the forehead, he should banish him from his kingdom.  
The branding, too, should be with the mark of a dog's foot. For **Manu**<sup>2</sup>  
says : “ For violating the bed of the preceptor ( the mark of ) a female  
“ part shall be impressed ; for drinking spirituous liquor, the sign of a  
“ tavern ; in the case of a theft, moreover, the mark of a dog's foot  
35 “ should be made ; for killing a Brâhmana, a headless corpse.”

This proceeding, moreover, shall be observed in the case of one who does not perform the ( necessary ) expiation after the punishment ( was declared ) as says Manu<sup>1</sup>: " But ( men of ) all castes who perform " the penances as prescribed, must not be branded by the king on the " forehead, but shall be made to pay the highest amercement."

5

#### Vîramitrodaya

Not only should one be arrested on suspicion, but also one about whom the offence of theft has been determined; nor also is the punishment of a money kind such as the highest amercement etc., but even a corporal punishment, banishment etc. shall also be for a thief; so the Author proceeds

10

#### Yājñavalkya, Verse 270

By several ( varieties of ) corporal punishments such as impaling on a cross, lopping off of the hands and the like means of corporal punishments for thefts in the case of others ( which will be stated hereafter ), for like cases the Brâhmaṇas should be branded on the forehead and banished from one's Kingdom ( 270 ).

15

#### Śûlapâṇi

#### Yājñavalkya, Verse 270

*Vadhaih*, by corporal punishments, *i. e.* by means of punishments to be stated hereafter; *sachinham*, ' with a brand, ' *i. e.* together with the mark of his own foot. As says Brâhmaṇa Manu: " On account of the property having " been acquired by illegal means, the wealth of these is tainted with sin. " Therefore the king should inflict corporal punishments on them, and " should not merely inflict a pecuniary fine" ( 270 ).

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The Author mentions the means of getting at the stolen property after the thief has been discovered

#### Yājñavalkya, Verse 271

In the case of a murder or a theft, the blame attaches to the village-officer, when the offender has not ( been traced to have ) gone out ; to the owner of a pasture ground ; to the detectives of thieves, when ( the offence is committed ) on the high-way or in a non-pasture ground.

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Mitākṣharā :—If the killing of man or of any other living animal, or a deprivation of property, takes place in a village, then the blame for neglecting a thief would be that of the headman of the village

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- alone ; and to atone for it, he himself must catch the thief and hand ( him ) over to the king. When he is unable to do that, he should pay the stolen amount to the owner, if he does not point out the foot-marks of the thief to have emerged from out of the village and beyond it.
- 5 When, moreover, such marks are pointed out, where the same (appear to ) enter, the owner of such property alone should make over the stolen amount. Likewise Nārada<sup>1</sup> also says : " He, within whose pasture-ground a robbery has been committed, must trace the thief to the best of his power, or else he must make good what has been stolen, when the
- 10 "foot-marks cannot be traced beyond (into another man's ground) (16). "When the foot-marks, after leaving that ground, are lost and cannot "be traced any further, the neighbours, the watchmen on the road, and "governors of that region shall be made to pay<sup>2</sup> ( 17 )."

- When, however, the theft takes place in a pasture-ground, the responsibility rests with the owner of the pasture alone. When, however,
- 15 the deprivation takes place on the road itself, or in a *nonpasture ground*, *awītaka*, *i. e.* in a place other than a pasture-ground, then the blame lies with the detectives of thieves, or the watchman of the road, or the governor of that region.

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## Sūlpāṇi

## Yājñavalkya, Verse 271

- When a man or the like has been killed, or a cow etc. has been stolen in a village, the blame attaches to the village headman, if the foot-mark of the men etc. is not seen emerging out of the village. " Outside the
- 25 village," however, *i. e.* on the road, then it ( *i. e.* the blame ) is of the owner of the pasture ground. In non-pastures *i. e.* places other than pastures such as fields etc. of the officer appointed to guard against thieves ( 271 ).

## Yājñavalkya, Verse 272

- A village, however, should pay ( when ) within its own limits, or that
- 30 where the foot ( mark ) has reached. When beyond a *krōśa*, five of the surrounding villages, or even ten villages also.

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Mitākṣharā:—Moreover, when however, a theft &c., occurs outside a village, but in a field which is on the outskirts of its boundary limits, then the inhabitants of that village alone should pay, if the foot-mark

1. Appendix, 16 and 17.

2. Held responsible for the loss.

of the thief has not emerged out beyond the boundary limit. When, however, it has emerged out, that village whereinto the foot-marks of the thief enter, shall alone make over the thief and do other acts.

When, however, any one is killed or robbed midway between several towns, and in a place which is more than a *krośa*<sup>1</sup> outside (each of them), and foot-marks of the thief have also been lost on account of the pressure of the crowd, then in such a case five villages *i. e.* the five villages together, or ten villages *i. e.* the ten villages together, should pay. The optional clause is used to indicate that as much should be done as would bring about a restoration of the property stolen &c, from the villages contiguous to the place. 5 10

When, however, the king is not able to cause property stolen elsewhere to be restored, then he should indeed pay from his own treasury, *vide* the text of **Gautama**:<sup>2</sup> "Having recovered property "stolen by thieves, he shall return it to the owner, or he shall<sup>3</sup> pay out "of his own treasury." 15

In case of a doubt as to whether property was stolen or not, the decision should be made by means of human proof or by ordeal, as has been laid down by **Vṛddha-Manu**: "If, while the property "is being caused to be restored, a doubt arises as to a theft (having "taken place), the person robbed should be put to an oath, or he may "establish (his case) by (the evidence of) his relatives." 20

#### Vīramitrodaya

#### Yājñavalkya, Verses 271-72

In the case of manslaughter, or theft of property, or robbery etc. the fault is of the headman of the village for conniving at a thief; therefore the village, its master, should restore back property which has been lost within his territory, if the foot-prints of the thief do not emerge out of the village. If, however, they emerge out then wherever they are traced as entering, the master of that territory should give. On the pasture-ground for the grazing of the cattle etc. the responsibility for assault or robbery is of the owner. At a place other than the pasture ground the responsibility 25 30

1. *i. e.* two English miles,

2. Ch. X, 46-47.

3. *i. e.* when the thieves are not traced, or having been traced have vanished, then the king should pay from his own treasury. Haradatta.

- for assault, robbery etc. is of the patrol of the road in regard to the tracing of the theft. The half of the verse beginning with 'within its limits etc.' is also connected with this. If, however, an assault or a robbery occur at a place intervening between several villages, and the
- 5 foot-prints also are obliterated by the pressure of the crowd etc. then the people of the five villages, or of ten villages collectively, should pay.

- The word *atha vâ* 'or, even' is used as indicative of neglect. Thus the result is that those who are in the neighbourhood of a *krośa* should pay. In some books for *krośāt* the reading is *kr̥ṣhāt*,
- 10 'from the cultivated land.' By the first use of the word *tu* is excluded the responsibility beyond the territory.

- When, however, the king is not able to compel the restoration from others of the property stolen, then the king himself should pay what was stolen by the thief. Since Gautama<sup>1</sup> has observed: "Having
- 15 "recovered property stolen by thieves he shall return it to the owner, "or he shall pay out of his own treasury" (271-72).

### Śûlapâṇi

#### Yājñavalkya, Verse 272

- What is lost within one's boundary, the village itself should pay; or
- 20 where the foot-marks emerge out of a cultivated place and elsewhere, what is stolen away, the men of five villages together should give by regard to the contiguity, or men of ten villages is the optional rule ( 272 ).

The Author mentions a special penalty in cases of particular offences

### Yājñavalkya, Verse 273

- 25 The King shall cause to be impaled on a stake *Bandigrâhas*, likewise the stealers of horses and elephants, as also those who commit murders with violence.

- Mitākṣharâ:**—The king should cause to be impaled on a stake the *Bandigrâhas*<sup>2</sup> and like others, or also men who commit murders accom-
- 30 panied with violence and force. This, moreover, is a rule regarding only one kind of corporal punishment, *vide* the text of *Manu*<sup>3</sup>: "Those who "break into a ( royal ) storehouse, an armoury, or a temple, and those "who steal elephants, horses, or chariots, he shall indeed slay without "hesitation."

1. Ch. X. 46-47

2. *Bandigrâhas* are those persons who forcibly take or carry away others as prisoners,

3. Ch. IX, 280.



Śūlapāṇi

Yājñavalkya, Verse 273

Those desperados, who regardless of life, and with the object of (extracting) money, carry wealthy persons as prisoners, these, as also those who steal elephants and horses, similarly those who kill with violence, all these the king should impale on stakes (273). 5

Yājñavalkya, Verse 274

The pick-pockets and cut-purses should be deprived of the tongs of their hands; for a second offence, they should be deprived of a hand or a foot.

Mitākṣharā:—Moreover, he who throws up the clothes or other things *i. e.* carries them away is **utkṣhepakāḥ**, a *pick-pocket*. He who carries away gold or other things tied in a cloth &c. either by loosening or cutting (the knot) is **granthi-bhedakāḥ**, a *cut-purse*. These two respectively should have the forefinger and the thumb resembling a tongs removed from their hands. 10 15

**Dwitiyâparârdhe**, on a second offence, moreover, a hand and a foot (joined together make up the compound expression) 'a hand and a foot.' That and each one of these, is 'a hand and a foot.' Those two should each have 'a hand or a foot' taken away from them *i. e.* of the pick-pocket and the cut-purse a hand and a foot should be cut off from each. This is the meaning. 20

This also has a reference to articles which bring on the highest Sâhasa, since Nârada<sup>1</sup> has observed. "The amputation of that limb (with which the crime had been committed) is declared to be the "punishment for a Sâhasa of the highest degree." 25

For a third offence, however, death alone (is the punishment). So Manu<sup>2</sup> (says): "On the first conviction he should cause two "fingers of a cut-purse to be cut off; on the second, a hand and a "foot; on the third, he deserves death."

The meaning is, the punishment should be determined upon by regard to the caste and the amount of property, as also the value &c. 30

Śūlapāṇi

Yājñavalkya, Verse 274

One who robs by lifting is a lifter. One who steals gold etc. tied in a cloth by breaking open the knot is a cut-purse. These two for a first offence should be deprived of the thumb and the first finger of the hand; for a second offence, should have their one hand and foot lopped off; and for the third offence these should be sentenced to death. As Manu<sup>2</sup> has stated: "For the third he incurs a capital punishment" (274). 35

As it is impossible to lay down several punishments in regard to each kind of property, having regard to the fact that the causes for a heavy or light punishment are innumerable, *viz.* the caste, the amount of the property, the relation, or the appropriation and disposal (of the same), as also the age, capacity, the qualities, the country, the time, and such other causes; the Author mentions a general rule for determining a punishment

### Yājñavalkya, Verse 275

10 In the case of the theft of inferior, middling, and superior articles, the fine shall be according to the value. In passing sentence, the place, the time, the age and the capacity should be taken into consideration.

Mitākṣharâ:—In the case of a *theft*, *harane*, of articles of inferior, middling, as also of superior quality, the punishment should be determined *sârato*, *according to the value*, *i. e.* the price (of the article &c.). The nature of an article of an inferior or other quality has been mentioned by Nârada<sup>1</sup>: “Earthenware, a seat, a couch, bone, wood, leather, grass, and the like, leguminous<sup>2</sup> grain, and prepared food, these are instances of articles of small value (14). Clothes other than those made of silk, and likewise cattle other than cows, and metals other than gold, are articles of middling value, as also are rice and barley (15). Gold, jewels, a silken cloth, a woman, a man, a cow, an elephant, and a horse, and the property belonging to a god, a Brâhmana, or a king, must be understood as articles of superior value (16).”

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25 The same Author<sup>3</sup> has pointed out a rule of punishment in terms of a *Sâhasa* of the inferior, middling, or superior quality in the case of articles of three classes, derived from the general rule: “That series of punishments which has been ordained by the wise for the three kinds of *Sâhasas* is equally applicable even to theft regarding articles of the three classes respectively.”] In the case of a jewel or a pot which is made of earth, or of cattle other than cows and horses, such as a buffalo, a ram, and the like, and also gold, grain &c., belonging to a Brâhmana, there is a rule of differentiation as to higher or lower quality

1. Ch. XIV. 14-16.

2. *Samidhânya*—is any pulse or grain growing in pods; a leguminous grain.

3. Ch. XIV. 21. Gautama, Ch. XII, 15-17.

and thus when it is desired to determine upon a higher or a lower form of punishment, it should be done by regard to the price &c.

There, moreover, **dandakarmanī**, in passing sentence, for fixing upon a particular punishment, the country, the time, and the age ( of the offender ) &c., should be carefully taken into consideration, as the determining causes thereof. These, moreover, also imply the ( consideration as to ) the caste, the size of the ( particular ) article, and ( the extent of ) the appropriation, or like other matters. Moreover<sup>1</sup>:  
 "The guilt of a *S'ûdra* in the case of a theft is eight-fold; and twice  
 "that and higher still will be the punishment in each higher caste, and  
 "in cases of offences by the learned the punishment shall be very much  
 "increased." The meaning is this: By the word 'guilt' (used) here, the punishment is intended. Whatever punishment has been prescribed for a particular theft, the same should be administered eight-fold in the case of theft by a learned *S'ûdra*. In the case of learned men of other castes, moreover, *e. g.* of the *Vaiśya*, *Kṣatriya* or *Brāhmaṇa* castes, the guilt is two-fold and higher up *i. e.* sixteen, thirty-two, and sixty-four<sup>2</sup> times the amount; since there is a higher punishment for a theft committed by a learned *S'ûdra*.

The same meaning has been brought out by **Manu**<sup>3</sup> also : " In ( a case of ) theft the guilt of a *S'ûdra* is eight-fold, sixteen times, that of a *Vaiśya*, and thirty-two times in the case of a *Kṣatriya* ( 337 ). That of a *Brāhmaṇa* sixtyfour-fold ; or quite fully a hundred, or ( even ) twice four-and-sixty fold ; ( each of them ) knowing the nature of the offence ( 338 )."

Similarly, a higher punishment is also determined by the consequences ( of the offence ). As says **Manu**<sup>4</sup>: " Of him who steals more than ten *Kumbhas* of grain, corporal punishment ( shall be inflicted ); "in other cases he shall be fined eleven times as much, and shall be made "to pay the property<sup>5</sup> ( to the owner )." A *Kumbha* is equal to twenty *Dronas*.

1. Bālabhaṭṭa assigns this text to Vasishṭha, but it is not found in the Dharmasūtras of that author.

2. There is a mistake in the print of the text here ( p. 148. l. 12 ).

Instead of षोडशविंशतिं तु षड्विंशतिं read षोडशविंशत्तुः षड्विंशतिं.

3. Ch. VIII. 337-338.

4. Ch. VIII. 320.

5. or its value.

The punishments of beating, deprivation of a limb, or death, to be declared against the thief should be determined upon by regard to the qualities of the owner robbed, as also to the time being plentiful of harvests, or of famine. Moreover, in the case of precious jewels  
 5 and like articles, there is a particular punishment even by regard to the particular number (stolen): "A<sup>1</sup> corporal punishment shall be "inflicted in the case of a theft of more than a hundred of articles "made of gold, silver (or other like metal), and of most excellent "clothes; as also of (a theft) of all kinds of jewels. For (stealing)  
 10 "more than fifty, the (punishment of) cutting off of the hands is "intended; in other cases, a fine eleven times the price (of the article "stolen) should be fixed." Likewise, from (the quality of) the particular article also: "For<sup>2</sup> stealing away men of noble family, and espe-  
 15 "cially women, and precious gems of all kinds, he deserves (the "punishment of) death." For stealing away men not of a high family, however, there is a different punishment: "The<sup>3</sup> punishment for one "who steals away a man, is the highest amercement; in the case, how-  
 "ever, of a like offence against a woman, he shall be deprived of his "entire property; and a corporal punishment for one who steals a  
 20 "maiden." In the case of articles of trifling value, however, *vide* the text of Nārada<sup>4</sup>: "In the case of articles of a value less than a "māṣha a fine five times the price of the article shall be imposed. For "stealing wood, a pot grass and the like, as also articles made of clay, "hamboo, and vessels made of bamboo<sup>5</sup>; muscles, bones and hides.  
 25 "For stealing vegetables with green roots, and fruits and roots, "preparations of cow-milk, and of the sugar-cane; and salt or oil. "Cooked food, (specially) prepared food; fish, flesh; and every sort "of object of (any) value, a fine five times the value (shall be the "punishment)."

30 A punishment, however, which in the cases of articles of small value is less than a hundred, or limited by fifty, the same should be adequately adjusted in (the case of thefts of) articles of the value of a Māṣha or of a higher value. The text of Manu<sup>6</sup>, moreover,

1. See Manu Ch. VIII. 321-322. Bālabhāṭṭa assigns this text to Nārada.

2. Ch. VIII. 323. 3. Nārada: Appendix 28. 4. Appendix 22-24.

5. The reading in Nārada is वेतसल्य—'of rattan.' 6. Ch. VIII. 329.

applicable to trifling articles, viz : "the fine shall be twice the value  
"of the article," has a reference to articles of a very small value *e. g.*  
an earthen pot or the like. Moreover, there is an excess of punish-  
ment also on account of an aggravation of the offence : "1The king

"should cut off the hands of those thieves who make

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"holes in the walls and commit thefts at night, and

"shall impale them on a pointed stake." Thus all

these are innumerable, and cannot be specifically mentioned in regard  
to each article, and so a lower or higher form of punishment should be  
determined by regard to the several circumstances such as the caste, the  
quality and the quantity ( of the subject matter ), and like others.

10

Of travellers, however, there is no punishment for slight infringe-  
ments, as says **Manu**<sup>2</sup>: "A twice-born (man) who is travelling and  
"whose provisions are exhausted, shall not be fined, if he takes a  
"couple of stalks of sugar-cane, or a couple of roots from the field of  
"another man." Also<sup>3</sup>: "Of gram, rice, wheat, barley, mallet, and  
"bean, a handful may be taken by those who are on their way in a  
"journey, if not prohibited. Likewise, he who has not eaten at six meals,  
"may take at the seventh meal from a man who neglects his sacred  
"duties, without ( however ) making a provision for the morrow."<sup>4</sup>

15

20

### Śûlapâṇi

#### Yājñavalkya, Verse 275

For stealing articles of low, middling, and highest qualities, such as  
fuel, pots, salt, jaggree, camphor, saffron etc. the punishment should be  
administered by taking into consideration the original price, the place,  
and the time of the robbery in determining the penalty in passing  
sentence ( 275 ).

25

The Author mentions a punishment even for one who is not  
himself a thief, but who helps a thief

#### Yājñavalkya, Verse 276

To him who knowingly supplies food, lodging, fire, water, counsel,  
implements, and expenses, to a thief or a murderer, the punishment shall  
be the highest.

30

1. Author not known. 2. Ch. VIII. 341. 3. Ch. XI. 16.

4. *i. e.* when a man has been compelled to fast for three successive  
days and three nights, he may ( even ) steal, but only from one who does not  
answer the responsibilities enjoined by the Śāstra, and, the theft also should not be  
with a view to store up provisions, not even for the morrow, but simply to satisfy  
the hunger so keenly felt.

**Mitākṣharâ:**—**Bhaktam**, food, for eating; **avakâśo**, lodging, i.e. a resting place; **agniḥ**, fire, for removing the cold of the thief; **udakam**, water, for one thirsty; **mantraḥ**, counsel, i. e. advice in the matter of a theft; **upakaraṇam**, implement, i. e. the means for committing a theft; **wyayaḥ**, expenses, i. e. in the journey of one going out to another region for committing a theft. He who offers these **chaurasya**, to a thief, **hantur wâ**, or to a murderer, **jânannapi**, even ( after ) knowing him, ( to be such ), for him the punishment shall be the highest amercement.

A blame attaches even to those who tolerate a thief, since **Nârada**<sup>1</sup> has said: "Or those who neglect<sup>2</sup> them though able ( to arrest ), "partake of ( the responsibility of ) their crime themselves."

#### Sûlapâṇi

Now an extension of the ( rules regarding the ) thieves

#### Yājñavalkya, Verse 276

**Bhaktam**, 'food', i.e. for eating; 'lodging', a resting place; fire for relieving cold; water, for one thirsty; counsel, i. e. advice; implements, the means for committing a theft; expenses, i. e. in a journey of one going out to another region for committing theft; he who deliberately gives these to a thief or to a homicide, for him the penalty shall be the highest amercement. **Kâtyâyana** says: "Those who purchase articles, as also "those who accept as donations, all these are equally punishable, as also "those who conceal them " (276).

#### Yājñavalkya, Verse 277

For giving a blow with a weapon, and also for causing an abortion, the punishment is the highest; for the killing of a man or a woman the punishment may be the highest or the lowest.

**Mitākṣharâ:**—**Śastrâvapâtane**, for giving a blow with a weapon, on the limbs of another, and **garbhasya pātane**, for causing abortion, in cases other than that of a female slave or of a **Brâhmaṇa**, the punishment i. e. the penalty shall be the highest. For causing the abortion of a female slave, however, a fine of a hundred has been mentioned ( in the

1. Ch. XIV. 19.

2. उपेक्षा—is forbearance or neglect, connivance. The meaning here is that those men who exhibit a kind of passiveness regarding criminals, even when they have the capacity to arrest them, knowing them to be such, render themselves responsible as accomplices.

text<sup>1</sup>) : "One who destroys the foetus of a female slave. As for the foetus of a Brâhmaṇa, the Author will mention an extension of the rule in<sup>2</sup>: "One who destroys a foetus unknowingly &c." And for the murder of a man or a woman the highest or the lowest punishment must be understood as laid down, having regard to the character, mode of living, and such other circumstances (regarding the deceased).

5

**Śûlapâṇi**

**Yājñavalkya, Verse 277**

For destroying a womb by striking a weapon, the punishment is the highest (amercement). For killing a superior man or woman, the highest, and for murdering a lower man or woman, the lowest amercement (277).

10

**Yājñavalkya, Verse 278**

A woman who is superlatively wicked, who destroys males, who breaks reservoirs, shall, if not pregnant, be plunged into water after a stone being tied.

15

**Mitākṣharâ:**—Moreover, one who is extremely wicked is *vipraduṣhîâ*, a superlatively wicked woman, e. g. one who causes the destruction of a child in the embryo, also who causes herself to miscarry; as also she who kills a man, and one who breaks reservoirs: these women, if not pregnant, should be plunged into water, after tying a stone round their neck, so that they may not swim up.

20

**Śûlapâṇi**

**Yājñavalkya, Verse 278**

A woman who is superlatively wicked i.e. who is an adulteress, as also a man who destroys an embankment, should have a stone tied to them and be immersed in water; the woman, also if she be not pregnant (278).

25

**Yājñavalkya, Verse 279**

One who administers poison, or sets fire, or kills her husband, preceptor or her own child, shall be deprived of her ears, hands, nose and lips, and be caused to be killed by bullocks.

30

1. II. 236 see p. 1281 l. 9 above.

2. Viśveśvara and Bālabhaṭṭa both say it is in the *Prâyaścittâdhyâya*, but it is not to be found there. It is probably a reference to Verse 280 following hereafter.



- Mitākṣharâ:**—Moreover, ( here again ) one who is not pregnant is understood. She also who administers *i. e.* puts poison into the food, drink &c. with the object of killing others; she, again, who sets fire to a village &c. that it may be burnt; likewise, one who causes
- 5 her own husband, preceptor, or children to be killed, such a one should have her ears, hands, nose and lips cut off, and herself caused to be killed by means of wild and untamed bulls.

This statement of a rule regarding a Sâhasika and made in the chapter on theft should be understood to be made incidentally.

10

### Vîramitrodaya

While treating particularly of (the law of) theft, the Author mentions penalties for similar offences

### Yājñavalkya, Verses 273-79

- Those who imprison moneyed men and keep them are (called)
- 15 *Bandigrâhas* (men-lifters); also those who steal horses or elephants, and those who forcibly kill men; such thieves the king should impale on spikes as (for) a capital punishment (273).

- One stealing clothes after lifting them, as also stealing gold etc. tied in a cloth after untying the knot, should be deprived of the fore-
- 20 finger and the thumb; and on a second offence of pick-pocketing, the king should deprive them either of a foot or a hand ( 274 ).

For stealing articles of low, middling, or high value, the punishment should be administered by regard to the value of the article equal to its price.

- 25 In the matter of determining the punishment, the country and other circumstances also should be taken into consideration by the king. There, says Nârada<sup>1</sup>: " Earthen pots, bed-steads, bones, wood, " hide, grass, and the like, as also leguminous grains and cooked food " are known as articles of low value. Clothes excepting silken ones, as
- 30 " also beasts excepting cow, and metals excepting gold, are articles of " middling value, as also are paddy and barley. Gold, jewels, silken " articles, women, men, cow, elephants, horses and articles belonging to " the deity and the Brâhmanas should be regarded as articles of " the highest value."

- 35 By the use of the ward *tathâ*, 'also', is included the addition of the king. The word *mahâdravya* used here-after discriminates

1. Ch. XIV, 14-16.

such elephants, horses as belong to the king. By the first use of the word *cha* are included those who destroy the chariots; by the second use of the word *cha* are included those who break through a fire-place etc. *vide* the text of *Manu*<sup>1</sup>: "Those who break through the building containing fire or weapons or the temples of Gods, as also those 5  
"who destroy the elephants, the horses and chariots, the king should  
"certainly, chastise without hesitation." By the use of the word *eva*,  
'certainly', is excluded any monetary penalty. *Manu*<sup>2</sup> has observed:  
"By reason of having acquired money by unjust means, their property  
"has a taint in it; therefore the king should punish them corporally 10  
"and should not inflict (merely) a monetary punishment" (275).

For him who offers food, place for residence, or fire for relieving cold, or offering fire, water etc. which would relieve cold, or instruments for stealing or killing such as a sword, or expenses for the journey over travelling to distant countries, or any of these to 15  
a thief of gold etc. or to a homicide or the like, even though not knowing him as a thief, for such a one although not a thief, the highest *i. e.* the one equal for a thief, alone is the punishment in conformity with the following text of *Nârada*: "Those who invite, or  
"those who give counsel or offer an asylum, all these are regarded as 20  
"equally amenable to punishment, as also those who conceal them.  
"<sup>3</sup>Those who give food or time, as also those who neglect running after  
"thieves when they have capacity, these also are guilty of that offence."  
When the king is not able to ward off thieves, one offering food etc. to a thief in the interest of self-protection is not guilty, *vide* this 25  
text of *Viṣṇu*<sup>4</sup>: "Except when the king is unable" (276).

For striking the body of another with a weapon, and for bringing about an abortion excepting in the case of a foetus of a female slave, or of a *Brâhmana*, the penalty is the highest amercement; for destroying *i. e.* killing the wives of particular persons such as characterized by their 30  
being *Brâhmanas*, the penalty shall be the highest or the lowest amercement. *Wâ*, 'or'; the option (indicated here) is (to be exercised) by regard to the general behaviour and character. By the use of the word *api* *i. e.* 'also', in the case of others than those known by their behaviour and character, the penalty shall be the middling amercement. By the use of 35  
the word *cha*, having regard to the text of *Viṣṇu*<sup>5</sup>: "He who steals

1. See Ch. IX. 280

2. Not found in *Manu*.

3. Ch. XIV. 19

4. Ch. V. 17. 5. Ch. V. 87.

“gems (shall pay) the highest amercement,” is included the theft of a not valuable jewel (277).

A woman who is superlatively wicked, who kills the foetus *i.e.* causes her own abortion, who distroys males, as also one who breaks  
5 reservoirs, should be plunged into water after a stone being tied to her neck, provided they are not pregnant. By the first use of *cha* are included males who are poisoners or incendiaries. By the second use of the *cha* are included acts stated in the text of **Śaṅkha viz.:** “For  
10 “for polluting liquid things, as also for offering a non-slave woman “to a slave” (278).

A woman who is a poisoner or incendiary, or who brings about the death of the husband, the father etc., or of the child, should be deprived of her ear, nose and lips, and be caused to be killed by a bull ( 273-79 ).

15

### Śūlapāṇi

Yājñavalkya, Verse 279

The poisoner and the incendiary, as well as a woman who murders her husband, and others should have their ears, hands, nose, and the lip lopped off, and be caused to be destroyed by sharp horned cows ( 279 ).

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Where a murder has been committed and the murderer is not known, the Author mentions the means of detecting the murderer.

Yājñavalkya, Verse 280

25

Of one who is killed by an unknown ( person ), the sons and relations should be immediately questioned as regards any quarrel, as also separately  
such women of his as were in love with other men.

30

**Mitākṣharâ:**—Of one who has been killed by an unknown individual, the sons, and all near relations **kalahamâśu praṣṭavyâḥ**, should immediately be questioned as regards any quarrel, thus: “With whom had he had a “quarrel ” ? Likewise, such women belonging to the deceased, and who were in love with other men *i. e.* were adulterous, should also be questioned,

Śûlapâṇi

Yājñavalkya, Verse 280

Of one who has been killed by an unknown person, the sons and relatives should immediately be questioned by the king's officers about any previous quarrel. Also his women in love with other men should each be questioned separately (280).

5

How should they be questioned? So the Author says

Yājñavalkya, Verse 281

"Was he fond of women, wealth, or a vṛtti?"<sup>1</sup> or, "With whom did he go?" Or, (the king) may minutely make inquiries of the people living in the vicinity of the place of murder.

10

Mitākṣharâ:—"Was he fond of women"? 'Had he a greed for money'? or 'Had he a desire to earn a livelihood'? or thus: 'For what woman had he a fondness and how is she connected'? 'For which wealth had he a fondness'? or 'Whence did he think of securing his livelihood'? or 'With whom did he go to another country'? Thus in various ways should his adulterous women be separately questioned after giving them assurances.

15

Likewise, such men *e. g.* the cowherds, foresters and others as were in the neighbourhood of the place of murder should also be questioned in confidence. Thus after determining upon the murderer by several means such as these, a punishment adequate for him may be declared.

20

Vîramitrodaya

In the text: 'In the case of murder or theft' &c. murder is stated by way of illustration; 'there, how can it be determined that he is a murderer?' Anticipating this in the context the Author suggests an answer

25

Yājñavalkya, Verses 280-81

Where a person is killed, and it is not known by what particular individual he was killed, there his sons and relations should immediately be questioned thus 'with whom had he a quarrel?'; with a view to (solve) the doubt regarding the escape of the thief; his women, such as wife, sister etc. 'With which other persons were they in love?' should each be separately questioned so as to avoid non-disclosure through shyness in the presence of each other (280).

30

And his sons and relations should be asked whether he was fond of women, or of money, or of employment, and with whom he had gone. In the absence of sons, relations, and others, persons in the vicinity of (the place of) death such as the cow-herd and the forester, he should  
5 question after creating confidence. By the use of the word *cha*, 'also', the Author includes the question such as 'with whose wife was he in love'? By the use of the word *api*, 'also', is included the suggestion that even without a question one should find out a trace of enmity (280-81).

### Sûlapâni

10

#### Yājñavalkya, Verse 281

The investigating officer of the state should slowly and persuasively question the people of the locality as to whether he was addicted to women, was covetous of wealth, or was looking out for a living, as also with whom he had gone, or the woman also, whose was she and the like. Brhaspati<sup>1</sup>  
15 says: "Where a corpse is found, but the murderer cannot be discovered, the king shall trace him by drawing an inference from previous en-  
"mities of his" (281).

#### Yājñavalkya, Verse 282

Those who set fire to a field, a house, a forest, a village, a pasture-  
20 ground or a threshing floor, likewise he who carnally knows the wives of the king, shall be burnt in a fire of grass.

Mitâksharâ:—Moreover, those who set fire to *kṣhetram*, a field, in which the fruits and the crops have ripened. *Weśma* means a house; *vanam*, a forest i.e. a wild forest or a pleasure forest; village;  
25 *vivitam*, a pasture ground has<sup>2</sup> been explained; or *khalam*, a threshing floor, as also he who has carnal intercourse with a wife of the king; all these should be covered with the *virāṇa*<sup>3</sup> grass, and burnt. This punishment has been mentioned here, as it is incidental to the punishment of death, (which accrues) to the incendiaries of fields &c.

30

Thus ends the Chapter on Theft.

1. Ch. XXII. 34.

2. See Yājñ. II. 160 (2) and the Mitâksharâ thereon p. 1171. ll. 17-18 above.

3. Straw—a kind of grass at the root of which is found the fragrant *khus* or वाङ्ग. See Amara II. 4. 164.—the *Andropogon Muricatus*.

**Viramitrodaya**

Now on the occasion of mentioning the penalties for theft and (causing) death, the Author states the penalties for a like offence

**Yājñavalkya, Verse 282**

The persons setting fire to any one of the six things such as a field and the rest, as also those having sexual intercourse with the wife of the king, should be covered with the *virāṇa* grass and burnt in its fire. By the use of the word *cha* are included those stated by **Manu**<sup>1</sup> in the text *viz.*: “He who destroys a rampart (of a town), or fills up the ditch, or “who breaks through the (town) gates, should be immediately killed.” 5  
By the use of the word *tu*, ‘however’, the Author excludes its destruction by any other means, as says **Kātyāyana**: “Either through a desire for “securing a friend, or earning wealth, one wishing the welfare of the “king and the people should never let off desperados who are a danger “to all beings. The king who either through covetousness or through 10  
“fear does not destroy sinners, there a commotion springs up in his “territory and he is deprived of (his) kingdom.” 15

**Nārada**<sup>2</sup>: “This law of punishment has been generally stated for all, “excepting corporal punishment for a Brāhmaṇa; a Brāhmaṇa should not “be killed; in his case the punishment is shaving of the head, banishment 20  
“from the town with a brand-mark of a culprit on the forehead, and a “parade on a donkey.” **Yama**: “Never shall at any place be corporal “punishment for a Brāhmaṇa; he should be kept in prison under restraint, “and the king should give him food; or he should be tied with a rope, and “the king should compel him to do labour for a month or half a month. 25  
“Taking into consideration the real subject-matter, having regard to the “offence, a Brāhmaṇa may be compelled to perform works forbidden “(for him).”

Other punishments are passed over through fear of prolixity.

Here ends in the commentary on Yājñavalkya  
the Chapter on Theft.

**Sūlapāṇi**

**Yājñavalkya, Verse 282**

Those who set fire to a field etc., those who have intercourse with the king's wives, should be burnt on a pile of fire, the pile made of *virāṇa* 35  
or other grass (282).

Here ends the Chapter on Theft.

## CHAPTER XXIV.

## On Adultery with women.

- The Chapter of Law called 'Adultery' is being now propounded. With a view to adjustment with the punishments for the lowest and other *Sāhasas*, a threefold division of the same has been specified by Vyāsa. "That has been designated as of three kinds, the lowest, the "middlemost, and the highest. Conversation with another's wife "in an improper place, or at an improper time, or in a solitary place, "throwing side-long glances at each other, and (exchanging) smiles, 10 "is known as the lowest *Sāhasa*. Sending fragrant scents and "flowers, odours, ornaments, clothes, and causing allurements by food "and drink, is known as the middlemost *Sāhasa*. Sitting together "in the same seat in a solitary place, with mutual contact, as also "pulling each other's hair, is known as a complete act of adultery". 15 **Saṅgrahaṇam**, *adultery*, is the (carnal) union of a man and a woman.

As the detection of adultery is necessary for the punishment of one who commits it, the Author mentions the means of detecting the same

## Yājñavalkya, Verse 283

- A man should be caught in the very act of adultery, with another's 20 wife, or while holding each other's hairs, or by other signs of excitement of lust, also by the admissions of both.

PAGE 151\*

- Mitākṣharā:**—A man should be detected as intent on adultery by the knowledge derived from the signs of holding each other's hairs, and the like. **Keśakēśi**, *holding each other's hairs*, is the (particular kind of) pas- 25 time in which each holds the other's hairs. Under the rule<sup>1</sup> of grammar

1. तत्र तेनेदम्. Pāṇini II. 2. 27. The rule means this. When two homonymous words both being in the locative case (तत्र), or both being in the instrumental case (तेन), are compounded, the sense being—'this happens therein with that,' the compound so formed is Bahuvrīhi.

The locative case is used when the sense is that of seizing; and the instrumental when the sense is that of striking e. g. in the example here केशेषु केशेषु गृहीत्वा इदं क्रीडनं प्रवृत्त—इति केशकेशि. The same would be the form when two combatants hold each other's hair in a duel. An example of the instrumental is दण्डादण्डि, भ्रूतलाभसलि &c.



“Two homonymous words coming together indicating—this happens “therein or with that, a Bahuvrīhi compound is formed” and under another rule<sup>1</sup> viz: “The affix *ich* ( इच ) comes after a Bahuvrīhi when “the compound denotes a reciprocity of action”, the affix *ich* is added at the end of the compound. And as it is in an adverbial<sup>2</sup> form, the instrumental case is silent. Therefore the meaning is this: From his amusing himself with another’s wife when both hold each other’s hair, or from the fresh signs of amorous intercourse, such as the marks created by the nails of the hands, or by the teeth and the like, or by the admission ( of the fact ) by both, (thus) having known him to have attempted to commit adultery, he should be arrested. The use of the expression ‘another’s wife’ is with a view to exclude a woman who has been appointed<sup>3</sup> ( to beget issue ), or a protected female slave.

10

### Śûlapâṇi

Yājñavalkya, Verse 283

15

In regard to adultery *i. e.* intercourse with other’s women, one may be apprehended while they mutually grasp each other’s hair, or by marks of amorous contact, such as the scars by the nail or teeth, or by the admission of the woman or the man ( 283 ).

### Yājñavalkya, Verse 284

20

Touching the knot of the lower garment, the breasts, the upper garments, thighs, and the hair, holding conversation at an improper place and time, as also sitting together on one seat.

**Mitākṣharâ** :—Moreover, he again, who behaves as if with a lustful desire towards another’s wife by touching the part ( of her body ) bearing the knot of the ( lower ) garment, or the garment covering her breasts, or the lower parts of her body, or the hair of her head; likewise, he who holds conversation with her at *an improper place, adese i. e.* in a place which is lonely, or where crowds of people have

25

1. Pāṇini V. 4—127. इच्च कर्मव्यतिहारे.

2. The whole formation is based on five rules of grammar viz. the two mentioned above, and three more viz. Pāṇini VI. 3—137, अन्येषामपि दृश्यते under which the vowel at the end of the first member is elongated ( viz केशा ); the adverbial compound has a support from Pāṇini II. 1-17 निष्ठदुपप्रतिष्ठ and the dropping or elision of the instrumental is accounted for by Pāṇini II. 4. 82 अव्ययादौ See Bâḷambatti.

3. *i. e.* under a Niyoga or appointment to beget an issue.

gathered together, or which is obscured by darkness; or who closets himself with another's wife on one sofa or any other like seat, as if intent on having carnal intercourse with her, such a one should be arrested as one who had attempted to commit adultery.

- 5 This rule, however, applies to a man about whom there is a suspicion as to an offence. Of any other, however, there is no guilt, as says **Manu**<sup>1</sup>: "That man, however, not before accused, who holds "conversation for some (good) reason, shall not incur any guilt, since "in him there is no transgression." It has been said by the same
- 10 **Author**<sup>2</sup>, that he who forbears when touched by another's wife, such a one also may be apprehended: "He who touches a woman at an "improper place, or forbears when (himself) touched, all that is con- "sidered as adulterous intercourse with mutual consent." It has been said by the **Same sage**<sup>3</sup> that he, moreover, who boastfully declares
- 15 before a company of gallants thus: "I have enjoyed this charming "accomplished woman times out of number"—such a one also may be apprehended: "When a man, actuated by vanity, folly, or braggardism, "declares himself that he has enjoyed (the love of) a certain woman, "that is also regarded as (constituting) an offence of adultery."

20

### Vîramitrodaya

- Now on the occasion of treating an intercourse with the wife of the king the Author begins the title of law known as 'Adultery with Women, which has been split into three varieties by **Vyâsa** in the following manner: "That has been designated as of three kinds, the lowest, the mid-
- 25 "dle and the highest. Conversations with another's wife in an improper "(or lonely) place, throwing sidelong glances at each other, and (exchang- "ing) smiles is known as the first kind of adultery. Sending fragrant "scents and flowers, odours, ornaments, and clothes, and causing allure- "ment by food and drink is known as the middlemost. Sitting together
- 30 "in the seat in a solitary place, mutually reclining against each other, as "also pulling each other's hair is known as a complete act of adultery."

There, first the Author mentions the means by which adultery developing into sexual intercourse may be known

1. Ch. VIII. 355.

2. Ch. VIII. 358.

3. Not found in *Manu*. The text, however, is to be found in *Nârada Ch. XII. 69*.

Yājñavalkya, Verses 283-84

*Kesâkesi*, 'pulling each other's hair', i.e. pulling the braids of each other's hair or of the knot of the waist cloth; at an improper place and time i.e. such as in a solitary place and at midnight or the like, having conversation and sitting together; in this manner a man may be apprehended as having had adultery with sexual intercourse with another's wife, that should be determined by the capacity for intercourse. It should be immediately apprehended by signs, the result of amour, such as the nail-scars etc. And also by the admissions of both the woman and the man as having a desire for sexual intercourse (283).

*Nivî*, 'knot', i. e. the knot of the wearing apparel; the covering of the breast i. e. the tying cloth; as also hair on the thighs; the touching of these. By the use of the word *cha*, 'and', is added the sending of fragrant scents, flowers etc. By the use of the word *eva*, 'also', is discriminated suspicion.

Śūlapâṇi

Yājñavalkya, Verse 284

One pulling at the garment knot should be apprehended for adultery. The rest is clear. *Bṛhaspati*<sup>1</sup> mentions the distinctions in this: "Casting "sidelong glances, smiling at her, similarly sending a female messenger, "touching her ornaments or clothes is termed an adulterous act of the "first degree etc." (Same as in *Vīramitrodaya* citing *Vyâsa* p. 1342 1.24-32).

The Author mentions a penalty for a man and a woman who, having been once prohibited, again hold conversation or do like acts

Yājñavalkya, Verse 285

A woman being forbidden shall pay a hundred, while a man two hundred, as a penalty; when the prohibition had been to both, their punishment is the same as for adultery.

*Mitkṣhaârâ*:—*Pratiṣhedhaḥ*, a prohibition, is that where, one is prohibited e. g. by the husband, the father, or the like. A woman who has been forbidden from holding conversation with a man, and attempts to do the same (again), *śatam dadyât*, shall pay a hundred, *panas* as penalty. A man, moreover, who sets about when similarly prohibited, shall pay two hundred. When, however, both the man and the woman were prohibited, and again attempt it, then the same penalty as will be hereafter mentioned for adultery i. e. according to the

*Vārṇas* ( of the parties ), shall be understood ( for them ). This rule, however, holds in cases other than those of the wives of *Châraṇas*<sup>1</sup> and the like, since *Manu*<sup>2</sup> has laid down: “ This rule does not apply  
5 “ to the wives of *Châraṇas*, nor of those who live on ( the<sup>3</sup> intrigues  
“ of ) their own ( wives ); for such men send their wives ( to others )  
“ or concealing themselves, allow them to hold criminal intercourse.”

#### Vîramitrodaya

The Author mentions a penalty for a man and woman holding conversation although prohibited

10 Yājñavalkya, Verse 285

When prohibited by the father and others for ( holding ) conversation etc. and the woman herself holds conversation with the man, then a hundred *paṇas*; when the man himself who is prohibited ( holds ), then he shall pay two-hundred *paṇas* as the penalty. When the man and  
15 the woman both are prohibited and hold conversations with each other, then the highest amercement has been laid, as in the case of adultery, likewise in the same manner should the penalty be for them. This is the meaning. By the use of the word *tu*, ‘ however ’, is excluded the prohibition of the other. This rule, however, is applicable in cases  
20 other than the wives of *Châraṇas* etc. *vide* the text of *Manu*<sup>4</sup>: “ This  
“ rule does not apply to the wives of *Châraṇas*, nor of those who live on  
“ ( the intrigues of ) their own ( wives ). For such men send their wives  
“ ( to others ), or concealing themselves, allow them to hold criminal  
“ intercourse ” ( 285 ).

25

#### Śûlapāṇi

Yājñavalkya, Verse 285

A woman who has been prohibited by the husband or parents from holding a conversation etc. and still are set on it shall pay a hundred *paṇas*. A man, moreover, acting similarly ( shall pay ) two hundred. For both  
30 having an intercourse, although prohibited, the punishment should be administered as has been prescribed. *Manu*<sup>5</sup> states a special rule: “ Beg-  
“ gars as also bards, those who have taken a sacrificial vow, and similarly  
“ artisans may have conversation with women without prohibition ” ( 285 ).

1. *Châraṇas*—are actors or singers, or persons of low repute maintaining themselves by mendicancy and singing &c. 2. Ch. VIII. 362.

3. आत्मजीविनः ( *Ātmajīvinah* ). ‘ who maintain themselves on their own.’

4. Ch. VIII. 352.

5. Ch. VIII. 361.

The Author now mentions the penalty for Adultery

Yājñavalkya, Verse 286

In the case of one of the same class, the highest amercement; in an Anuloma<sup>1</sup> (intercourse) the middle (amercement); but in a Pratiloma<sup>1</sup>, death of the man, and the lopping off of the ear and the like of the woman.

Mitākṣharâ:—In the case of a man of any of the four *varṇas*, a man shall be fined one thousand and eighty *paṇas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then he shall be fined in the middle amercement. When, moreover, he has intercourse with a woman of his own *varṇa* who was not under (any one's) protection, or with a woman of a lower *varṇa* who was under protection, then a special penalty has been stated by Manu<sup>2</sup>:

"A Brāhmaṇa shall be fined a thousand, when he has intercourse with  
"a guarded *viprâ* woman<sup>3</sup> against her will; he

PAGE 152\* "shall be fined five hundred when he had con-

"nexion with one who was willing (378). A

"Brāhmaṇa shall be compelled to pay a fine of one thousand if he  
"has intercourse with women of two (classes)<sup>4</sup> who are under pro-  
"tection; for (a similar offence against) a *Sûdrâ* woman, the fine for  
"a *Kṣhatriya* and *Vaiśya* shall be one thousand (383)."

This, moreover, shall be understood to hold in the case of women other than the wives of the preceptor, or a friend; since Nārada<sup>5</sup> has observed: "Mother, mother's sister, mother-in-law, maternal-uncle's  
"wife, father's sister, the wife of a paternal-uncle, or a friend, or a  
"pupil, sister, her friend, daughter-in-law (73); daughter, spiritual  
"preceptor's wife, a woman of his own *Gotra* come (to him) for  
"protection, the queen, a female ascetic, the nurse, a virtuous woman,  
"and a woman who is of the highest class (74). When a man carnally  
"knows any one out of these women, he is said to have committed  
"the offence of violating<sup>6</sup> the bed of a preceptor. For such a crime,  
"no other punishment is ordained than the excision of the organ (76)."

1. See Āchārādhyāya Chapter IV. These terms are used with reference to the man who commits the act of adultery.

2. Ch. VIII. 378; 383.

3. A Brāhmaṇî woman.

4. i.e. those mentioned in Manu Ch. VIII. 382. 5. Ch. XII. 73-75.

6. गुरुतत्परा i. e. the special kind of crime where the offence is that of knowing carnally the preceptor's wife.

In the case of a *Pratiloma* offence, *e. g.* intercourse with a woman of the highest class, death (is the sentence) for a male of the Kṣatriya or other (lower) class. This, however, has a reference to a guarded woman; for any other, there is a pecuniary fine; *vide* the text of **Manu**<sup>1</sup>:

- 5 "But even these two<sup>2</sup>, if they offend with a Brāhmaṇi, who is guarded, "shall be punished like a *S'ûdra*, or be burnt in a fire of dry grass (377). "If a Vaiśya or a man of the Royal tribe has intercourse "with an unguarded Brāhmaṇi, let him (*i. e.* the king) fine the "Vaiśya five hundred, but the Kṣatriya one thousand (376)." Of  
10 a *S'ûdra*, moreover, having intercourse with an unguarded woman of the highest class, the punishments are the excision of the organ, and confiscation of the entire property; and of him, having intercourse with a guarded woman (of a like description), the sentence is death and confiscation of the entire property, as has been stated by the **same Sage**<sup>3</sup>:  
15 "A *S'ûdra* having intercourse with a woman of a twice-born class— "whether guarded or unguarded—if unguarded, he loses the organ, "and all his property, if guarded, everything (even his life)."

- Of a woman, however, having intercourse with a man of a lower tribe, the ears—and by the use of the word *Ādi*, 'and the like,'—the  
20 nose, should be lopped off. For one having intercourse with a man of a superior or equal tribe, a fine should be ordered.

- This rule regarding the sentence of death &c., is (intended) only for the king, he alone having the right to govern, and not for every twice-born<sup>4</sup> individual. For such a one the holding of a weapon  
25 having been prohibited by the text<sup>5</sup>: "A Brāhmaṇa should not take "up a weapon even for inspecting (it)"

1. Ch. VIII. 377, 376.

2. *i. e.* the Vaiśya and Kṣatriya referred to in VIII. 376.

3. Ch. VIII. 374.

4. Here the term used is quite general, but from the text quoted next, it appears to be intended for a Brāhmaṇa.

5. The Author of this text is not known. Bālabhāṭṭa, assigns it to Gautama, but it is not found in that book. Gautama on the other hand allows the profession of a warrior for a Brāhmaṇa when he cannot obtain his livelihood by the ways prescribed for him. See Ch. VII. 6. To the same effect are the texts of **Manu** cited next.

Vīramitrodaya

Nârada has defined<sup>1</sup> the title of law called 'Relations between men and women': "Where the ritual of marriage of women and men is, "described, that title of law is called 'Relation between men and women.'" This chapter having been in terms already dealt with by the chapter on marriage, the Author passes it over and begins by an entire chapter the title of law known as Miscellaneous, and characterized by Nârada<sup>2</sup> as follows ( same as Mitâkṣharâ on p. 1364 lines 4-15 ).

Yājñavalkya, Verse 295

One who writes by either omission or addition an order commanded by the king, for him, as also for one who lets go an adulterer or a thief, the penalty is the highest amercement. By the first use of the word *api* is included an adverse implication, and by the second use (an addition in) the writing.

Śūlapâṇi

Yājñavalkya, Verse 295

He who omits from or adds in writing to the order of the King, for him, and for one who has sexual intercourse with others' wives, as also for one who lets a thief off, the penalty is the highest amercement (295).

As incidentally occurring in the context, the Author mentions a penalty also in cases other than those which depend on the king

Yājñavalkya, Verse 296

For defiling a *Dvija* with an uneatable thing, the punishment shall be the highest amercement; a Kṣatriya, the middlemost; a Vaiśya, the lowest; and a S'ūdra, half of the lowest amercement ( shall be the punishment ).

Mitâkṣharâ:—Dūṣhayitwâ, for *defiling*, a Brâhmaṇa, i.e. making him eat an *uneatable thing*, *abhakṣhyeṇa*, i.e. the urine, fœcis &c., or any such thing mixed with food or drink, a man becomes liable to be punished with the highest amercement; for similarly defiling a Kṣatriya, however, the middlemost (amercement); for defiling a Vaiśya, the lowest or first (amercement); and for defiling a S'ūdra he becomes punishable with half the first amercement. This is the connection. For defiling with garlic or other similar uneatable things a greater or less punishment should be determined by regard to the greater or less magnitude of the offence.



## Vîramitrodaya

## Yājñavalkya, Verse 296

- For one accusing a Brâhmana with having eaten an uneatable thing such as fish etc. the highest amercement, for accusing a Kshatriya, the  
 5 middle amercement, for accusing a Vaiśya the first amercement, for accusing a Śûdra half of the first amercement, shall be the penalty (296).

## Śûlapâṇi

## Yājñavalkya, Verse 296

- For polluting a Brâhmana with non-eatables such as the fish etc. the  
 10 punishment is the highest amercement; the rest is clear.

As for the higher punishment mentioned by Viṣṇu<sup>1</sup>: "One polluting a Brâhmana with an uneatable shall be punished with ten gold coins", that has a reference to serious (allegations) *e. g.* about eating garlic and such other uneatables (296).

## Yājñavalkya, Verse 297

- 15 • He who deals in false gold, also one who sells unclean meat, shall be maimed and also compelled to pay the fine or the highest amercement.

- Mitākṣharâ:—Moreover, a goldsmith or other dealer in gold who palms off false gold prepared by the addition of lustre (to a base  
 20 metal) by chemical processes, and a butcher or other dealer in flesh, who habitually sells unclean meat *e. g.* the flesh of a dog or other like animal—and by the use of the word *cha*, 'also', also one who palms off imitation silver or other metal (as good metal)—all these shall be (maimed by being) deprived of the three organs *viz.* the  
 25 nose, the ears, and the hands. By the use of the word *cha*, 'and also',—shall also be compelled to pay the fine of the highest amercement, which comes to be inferred from (the use of) the (expression) cutting off of the organs. As for the punishment mentioned by Manu<sup>2</sup>:  
 30 "But the king shall cause a goldsmith who behaves dishonestly, the most noxious of all the thorns, to be cut to pieces by razors", that has a reference to the gold of a Deity, a Brâhmana or the King.

Vīramitrodaya

Yājñavalkya, Verse 297

A goldsmith or the like dealing falsely and in similar manner *Kūtaiḥ*, 'in false', i. e. counterfeit gold creating an appearance of gold; a butcher or the like habitually selling unclean i.e. bad meat, such as the flesh of dogs etc., should be deprived of three organs viz. the nose, the ear, and the hand and should be compelled to pay the highest amercement. By the first use of the word *cha* is included the banishment etc. of a Brāhmaṇa who is undeserving of a corporal punishment; by the second use the Author intends the prescribing of a cumulative punishment. By the word *tu*, 'however', the Author excludes other cases such as those which have a reference to the gold of the gods or of the Brāhmaṇa as per the following text:<sup>1</sup> "A king should hack to pieces with edged weapons a goldsmith set on unjust dealings as the basest of the offenders of all sinners and the greatest thorn" (297).

Śūlapāṇi

Yājñavalkya, Verse 297

One who deals in counterfeit gold by putting on a colourable resemblance, those who sell prohibited meat by describing it as goat meat or the like allowed by law should be deprived of the three organs i.e. the nose, ear, and hands (297).

Yājñavalkya, Verse 298

For any injury caused by a quadruped, when the keeper was crying loudly 'Be away', there shall be no blame; similarly for like injuries caused by wood, earth, stone, arm, or a yoked beast.

Mitākṣharā :—For the offence of killing a man or the like committed by a quadruped, such as a bull, an elephant, or like animals, the blame shall not accrue to the owner of the bull or any other animal when he was loudly crying 'Be away.' Similarly, for an injury likewise caused by the throwing of a club, a clod of earth, an arrow, or a stone, by means of the arms, or by a yoked beast i. e. by a horse or the like while carrying a yoke, no blame shall accrue to the thrower of the wood &c. when he was crying 'Be away.' The object in stating that there is no offence in any injury caused by throwing a wood &c., is to indicate that there is no penalty for such injury. However, the penance for doing anything unintentionally does verily exist. By the use of the words wood &c. the missiles of *S'akti*, *Tomara* and the like are also included.

## Śûlapâṇi

## Yājñavalkya, Verse 298

On an attack by a bull or like animals, one who previously shouts loudly 'Be away', for such a one there is no fault which can deserve punishment. So also in the case of one practising at clubs or lumps of earth, who before shouts out with the words, 'Be away' there is no fault (298).

## Yājñavalkya, Verse 299

In the case of injuries caused by a conveyance owing to the nose-string having been snapped, or the yoke and the like having been broken, or by a rear motion (of the animals), the owner shall not be blamed.

Mitākṣharâ:—Moreover, the string which is used in the nostril is (called) the nose-string; that cart or other conveyance where the nose-string of a bullock yoked to the cart has given way is a **chhinna nasya** conveyance; similarly (in the case of an injury caused) by a conveyance where the yoke has given way. By the use of the term *Ādi*, 'and the like,' where the axle or the wheels or any other part is broken by the vehicle moving rearwards *i. e.* backwards; and by the use of the word *cha*, 'also', by going crookedly or coming in front. For an injury caused to men or others, the owner or the driver, **adoṣhabhāk**, shall not be blamed, since the injury was caused by no action on his part. So also **Manu**<sup>1</sup> (says): "When the nose-string is snapped, when the yoke is broken, when the vehicle turns sideways or back, or when the axle of a conveyance is broken, and similarly when a wheel is broken (291). When the leather thongs, and similarly the rope round the neck or bridle are broken, and when the driver was crying 'Be away,' Manu has declared that in such cases there shall be no punishment."

## Śûlapâṇi

## Yājñavalkya, Verse 299

That which is placed on the nose is *nasya*. When one is injured by a conveyance carried by bullocks whose nose-strings are snapped, so also by a cart with its yoking-pin broken. By the use of the word *ādi*, 'et cetera', are included the wheel and the like. By such (conveyance) while riding back if any injury is done the owner does not incur any blame (299).

The Author mentions a punishment for the owner in case of neglect  
Yājñavalkya, Verse 300

The owner of an animal possessed of tusks or horns, who although having the power, still fails to relieve, shall pay the lowest amercement, and a double, if the sufferer cried for help.

Mitākṣharā:—While a man is being injured by animals *daṁṣṭribhiḥ*, possessed of tusks, such as an elephant &c. *śṛṅgibhiḥ*, or of horns, such as bullocks &c., who are driven by an inexperienced driver, and the owner although he was competent does not relieve them, and then neglects them, then he shall pay the lowest amercement for having engaged an unskilled driver. When, however, he does not relieve even when the sufferer cried “Oh I am (being) killed,” then a double (fine shall be paid).

When, however, he engages a competent driver, then the driver alone shall be punished, and not the owner, as says *Manu*<sup>1</sup>: “If the driver be skilful, he alone shall be fined.” Moreover, special punishments shall be determined by regard to particular animals (concerned) as says *Manu*<sup>2</sup>: “If a man is killed, the guilt will be at once the same as (that of) a thief; for large animals such as cows, elephants, camels or horses, half of that (296). For injuring small cattle, the fine (shall be) two hundred *paṇas*; the fine for beautiful wild quadrupeds and birds shall amount to fifty (*paṇas*) (297). For donkeys, sheep, and goats the fine shall be five *māṣas*; and the punishment for killing a dog or a pig shall be one *māṣa* (298).”

#### Vīramitrodaya

Yājñavalkya, Verses 298-300

When the owner of a quadruped loudly warns people with the words “Be away, be away”, and any man is killed by an elephant, a bull, or the like, such owner is not guilty of any offence; similarly does not an offence occur on the part of one warning people with the words “be away” for any injury caused by wood etc. stored in a cart, and also by others apart away from it (298).

So also the owner of a cart or any other vehicle is not guilty on account of any injury caused by the backward or forward movement of the vehicle due to the nose-string having been snapped or the yoke or the yoke-pin being broken (299).

If one who is competent does not offer relief to one who is being injured by a horned beast such as the cow, or a tusked one, such as the elephant etc. such a one should be punished with the first amercement. Similarly when a loud cry is raised and he does not give relief, he should be given double the punishment. *Yugyam*, 'conveyance', *i. e.* that which is yoked; and the yoke *i. e.* the wood of the yoke. By the first use of the word *tathâ*, 'also', is included the snapping stated by it, and by the second use is stated the snapping without the fault of the driver, as **Manu**<sup>1</sup> has declared a punishment for the owner for a fault of the driver thus: "Where a conveyance goes astray on account of the fault of the driver, there the owner is liable to punishment; when injury is caused, the punishment is two hundred (*pañās*)". In the expression 'be away', the use of the word *eva* does not exclude the tendency to kill. By the use of the word *tathâ*, 'also', a third time, are included animals like the female fox etc. (300).

### Śûlapâṇi

#### Yājñavalkya, Verse 300

The owner of horned beasts such as the bull etc., as also of the animals with tusks, or tooth such as the apes etc. not offering relief, although competent, when one is attacked by these shall pay the first amercement. If the sufferer loudly cried for help such as "Take away the bull or the monkey" and if relief is not given, then he should pay double (300).

#### Yājñavalkya, Verse 301

He who charges an adulterer as a thief shall be made to pay a fine of five hundred. For him who takes money and lets him go, eight times (of) the same.

**Mitâkṣharâ**:—Moreover, out of fear for the disrepute of one's own family, he who accosts a **jāram**, an adulterer with another man's wife, charges him **chaura**, as a thief, and says 'Get thee gone,' **dāpyaḥ pañcha śatam damam**, shall be made to pay five hundred as penalty *i. e.* that kind of fine in which are five hundred *pañās*. He, moreover, who accepts money from the adulterer, as a bribe, and releases the adulterer, such a one shall be made to pay eight times the amount of the sum so received.

Vīramitrodaya

Yājñavalkya, Verse 301

One accusing an adulterer as a thief out of fear of disreputation of the family, shall be made to pay a penalty of five hundred *panas*. Having accepted money payment as a bribe, one who lets go an adulterer should be made to pay a fine eight times of the amount received (301).

Śūlapâṇi

Yājñavalkya, Verse 301

Out of fear for a disrepute of (one's) family, one charging an adulterer with the words "Here is a thief running away" shall be punished five hundred. One accepting money and releasing an adulterer shall be compelled to pay eight times the amount (301).

Yājñavalkya, Verse 302

The king should banish, after cutting off his tongue, him who always imprecates evil upon the king; who calumniates him, as also he who divulges his secret counsels.

**Mitākṣharâ** :—Again, one imprecating evil upon the king *e. g.* inimical sentiments towards the king, always *i. e.* who speaks often and often; as also one, who *tasyaivâkrośakârīṇam*, calumniates him, *i. e.* the king *i. e.* who has a habit of defaming him; as also one who divulges *i. e.* reveals to unfriendly persons, *tanmantrân*, his secret counsels, calculated to increase the prosperity of his own kingdom, or to bring about the fall of another kingdom, the king should cut off the tongue of such a one, and banish him from his own kingdom.

For stealing the treasury, or for a like offence, moreover, death alone (is the punishment); *vide* the text of **Manu**<sup>1</sup>: "On those who rob the king's treasury, and those who persist in opposing ( his commands ), he shall inflict various kinds of corporal punishments, likewise who "conspire with the enemies." 'Various ( kinds of ) punishments' *e.g.* confiscation of the entire property, cutting off of a limb, death &c.

Even where there is confiscation of his entire property, that which is the means of his livelihood must not be attached, excepting the implements of theft, as says **Nârada**<sup>2</sup>: "The weapons of soldiers, the "beasts of burden and the like of those who maintain themselves by "conveying the goods ( of others ), the ornaments of public women,

"the various musical or other instruments of those who are proficient in these (10); And any implement<sup>1</sup> by which artificers gain their subsistence, must not be laid hold on by the king, even when he confiscates their entire property (11)."

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- 5 On account of the prohibitive text, viz. "for a Brâhmana, however, there shall be no corporal punishment," the shaving of his head, and the like should be made in the place of execution, *vide* the text of Manu<sup>2</sup>: "For a Brâhmana, however, (the punishments are), the shaving of the head, the branding and banishing from the town  
10 "viz., by branding his forehead with the mark of the crime with which he is charged, and by making him ride out on a donkey."

#### Vîramitrodaya

#### Yājñavalkya, Verse 302

- One who indulging loudly in denunciations of the king *i. e.* one  
15 traducing the king, or one communicating his secret counsel to his enemies, should have his tongue cut off and be banished. This is the meaning.

- By the first use of the word *cha* is included the (punishment of) deprivation of the entire property stated in the text of Nârada<sup>3</sup> viz. "For  
20 "one who decries a king who is pursuing his own duties shall have his tongue cut off if his mind is not inclined at the deprivation of the property." By the second use of the word *cha* are included punishments prescribed by Manu<sup>4</sup> in the various offences in the following text: "On  
"those who rob the king's treasury, and those who persist in opposing (his commands) he shall inflict various kinds of corporal punishment  
25 "ments, likewise on those who conspire with the enemies."

#### Śûlapâṇi

#### Yājñavalkya, Verse 302

- One who makes a public accusation against the king in the presence of a large number of people, one who traduces the king, as also one who  
30 discloses his secret counsel which is the basis of the stability of the kingdom, should have his tongue cut off and be banished. For a Brâhmana, however, only banishment (302).

1. Dr. Jolly, edition reads शिल्पद्रव्याणि शिल्पिनाम् Fr: 'The tools of artizans.'

2. Not found in the published editions of Manu.

3. Ch. XV-XVI. 30.

4. Ch. IX. 275.



### Yājñavalkya, Verse 303

For one who sells what was found on a dead body, and likewise for him who strikes his *Guru* (seniors), and (also) for him who mounts the king's conveyance or throne, the punishment is the highest amercement.

**Mitākṣharā:**—Moreover, for a vendor of what is found on the body of a dead person *e. g.* clothes, flowers, and the like; for one who strikes his *Guru i. e.* the father, the preceptor and the like; and likewise for one who, without the permission of the king mounts on his conveyance *e.g.* the horse, the elephant and the like, as also his seat, such as the royal throne or the like, the punishment is the highest amercement.

### Vîramitrodaya

### Yājñavalkya, Verse 303

For one who sells articles such as a garland etc. found on a dead body, as also one who strikes a preceptor; and for him who mounts a horse belonging to the king or his throne without his permission, the penalty is the highest amercement. By the use of the word *tathā*, 'also', are included those who beat their wives or sons with anything other than a rope or a bamboo stick or at a place other than the back (303).

### Śûlapāṇi

### Yājñavalkya, Verse 303

For one who sells clothes and the like placed on a dead body, the punishment is the middle amercement, as also for one who beats a senior, or one who mounts the king's conveyance or throne (303).

### Yājñavalkya, Verse 304

For him who puts out both eyes, him who predicts<sup>1</sup> evil of the king, and for a *S'ûdra* living as a *Brâhmana*, the punishment is eight hundred (*panas*).

**Mitākṣharā:**—Again, he, moreover, who through anger puts out the eyes of another; he also, who being a scholar in the science of astrology, but who, not being the preceptor or a like other well-wisher (of the king,) predicts an evil *i. e.* an inauspicious event about the king *e. g.* "By the end of the year you will be deposed from your "throne" or the like, and likewise one who being a *S'ûdra*, with the object of getting a meal, exhibits the sacred thread and other marks of a *Brâhmana* (on his body); for (all) these the punishment is eight hundred (*panas*) *i. e.* that kind of punishment in which there are

1. राजद्विषदिशकृतः It may also mean "who imprecates evil" or "spreads evil report" about the king; or also, who "obeys the commands of the king's enemies."

- eight of a hundred *paṇas*. For a Sûdra putting on the disguise of a Brâhmana with the object of getting an anniversary meal, the punishment prescribed in another Smṛti should be observed *viz.* "A mark resembling the sacred thread should be carved on his body by means  
5 "of a heated pin." For one wearing the sacred thread or other sign of a Brâhmana for obtaining maintenance, death alone (is the punishment), *vide* the text : "He should corporally punish those Sûdras who wear  
"the marks of the twice-born."

#### Vîramitrodaya

#### 10 Yājñavalkya, Verse 304

For one piercing the eyes of another, as also for one who performs a behest of an enemy of the king, as also for a Sûdra subsisting on alms received by wearing the emblems of a Brâhmana, the punishment shall be eight hundred *paṇas*. This is the meaning.

- 15 If while living as a Brâhmana a Sûdra has sexual connection or the like with a Brâhmaṇi then he should certainly be put to death. *Vide* the text of Manu<sup>1</sup> : "All these the king shall punish, as also the  
"Sûdras who wear the marks of the twice-born." "For a Sûdra wearing  
"the garb of a Brâhmana for (participating in the) *smârta* performances  
20 "such as a meal at a *śrâddha* and the like, the king should brand the  
"sacred thread on his body with a heated wire," the above punishment laid down in another Smṛti should also be observed. The text of Manu<sup>2</sup> *viz.* : "One though born low, through avarice earns a living  
"by the ( performance of ) acts proper for the highest, such a one the  
25 "king shall deprive of all wealth and banish", has a reference to a Vaiśya and a Kṣatriya. By the use of the word *tathâ*, 'also', is included the case of one who predicts an evil of the king such as "at the end of the  
"year you will be deposed from your kingdom." ( 304 ).

#### Śûlapâṇi

#### 30 Yājñavalkya, Verse 304

- Those who pierce the two eyes, those who predict evil of the king ; for a Sûdra also who in the garb of a Brâhmana earns a livelihood, the punishment is eight hundred *paṇas*, as says Viṣṇu<sup>3</sup> : "For striking  
"out both eyes of a man, the king shall not release ( such a one ) from jail  
35 "as long as he lives, or he shall order him to be reduced to a similar state,"  
( 304 ).

The Author mentions a penalty for wrongly deciding a suit through anger, avarice or like other cause

Yājñavalkya, Verse 305

After, however, reviewing judicial proceedings which have been wrongly decided, the assessors, together with the victorious party, should be fined in twice the amount in dispute. 5

Mitākṣharâ:—Vyawahârân, *judicial proceedings, durdr̥ṣhâtân*, which are wrongly decided, in contravention of the Smṛti and Usage, and which on account of passion, avarice or like other cause, are suspected as being improperly conceived, the king should himself decide properly again; and the assessors, together with the victorious party in the former trial, whose guilt has been established, should each be compelled to pay twice the amount of the fine which is prescribed for a defeated party in a litigation. In the text<sup>1</sup>: "out of passion, avarice," there is no rule of punishment for the (wrongful) winner; and thus there is in this verse no (fault of) repetition of the former text<sup>1</sup>. 10 15

When, however, a wrong decision is given in a suit on account of the fault of the witnesses, then the witnesses alone should be punished, and neither the winning party, nor even the assessors. When, however, a wrong decision is given in consultation with the king, the assessors and all others shall be punished, vide the text<sup>2</sup>: "One quarter (of the inquiry together with the king) goes to the offender; one quarter goes to the witness; one quarter goes to all the members of the court; (and) one quarter goes to the king." This text<sup>3</sup> moreover, is intended to demonstrate the guilt of the king and others (to) each severally and not of distributing the share of 20 25

1. Yājñ. II. 4. see p. 643 ll. 5-8 above. The fine for the wrongful winner is not mentioned in II. 4 and so this text is not open to the objection of the fault of repetition or tautology.

2. of Nārada Ch. III. 12 see also III. 11. Cf. with this Manu Ch. VIII. 18, 19 &c.

By these texts, even those judges who do not deliberately give a false decision, but whose decision comes to be wrong, on account of their inattentiveness at the trial, are equally guilty.

Medhâtithi is of opinion that the guilt goes to the king if the sentence were passed by him, otherwise not.

3. i. e. the text of Nārada quoted above.

the (*apûrva*<sup>1</sup>) unseen result (to be known hereafter) to each severally, as it has been said<sup>2</sup>: "An *apûrva* generates a result which (individually) "accrues to the actor (alone)."

### Vîramitrodaya

5

#### Yājñavalkya, Verse 305

The king should try again causes at law in pursuance of the (rules of) Śâstra when he comes to know that these causes have been wrongly investigated through of feelings of passion, malice, anger etc. and the councillors who tried the first cause should be severally punished  
10 with twice the amount involved in the suit, along with the successful party who got success by the wrong investigation. In some books instead of *prthak*, 'separately', the reading is *damam* 'punishment.' Although as stated before, the punishment for the councillors has been here declared by way of the statement of a rule of punishment for the  
15 successful party, the first use of the word *tu*, 'however', discriminates a cause honestly investigated by councillors from the one where the councillors become punishable on account of a retrial. By the use a second time of *tu*, 'however', is excluded the punishment of one who has been fraudulently defeated (305).

20

### Śûlapâṇi

#### Yājñavalkya, Verse 305

When judicial trials held according to law are again investigated with the help of many Brâhmanas versed in the Śâstras, if it is decided in the reverse, the first councillors together with the successful party shall  
25 each be separately punished by the King. Nârada<sup>3</sup> states a special rule: "In the case of those trials which have been tried by the help of witnesses "and councillors and also those which have been defeated on account of

1. According to the Ārya rules about the accrual of responsibility, in addition to the results of one's acts which the actor has to suffer in this world, he also prepares for himself by his thoughts and actions, something which always sticks to him even after he leaves the human body. That is known as अपूर्व *Apûrva* viz. "that unseen result of virtue and vice, which is a relation superinduced, not before possessed, unseen, but efficacious to connect the consequence with the past and remote cause, and to bring about at a distant period, or in another world or birth, the effect."

2. See Jaimini III. 7-8. (18-20).

The meaning is that in the case of *Apûrva* there is no division or distribution of the guilt or its consequences, but that each one is jointly and severally amenable to the entire result.

समवाय *i. e.* सम्बन्ध Relating to ; कर्तुंसमवायि *i. e.* relating to the actor.

3. Ch. II. 40.

‘his own evidence, there is no re-opening of it, nor can there be under the ‘law a re-trial’. In the case of those which have failed on account of the witnesses and the councillors by an accusation of the witnesses or councillors, there will not be a judicial trial again; ‘defeated by his own evidence’ i.e. defeated on account of the mutually contradicting testimony. So also **Brhaspati**: “By reason of his running away without filing a reply, as “also by taking resort to the opposite party, one who is defeated, the “plaint of such a one is not admitted, as also of one who has given up “his own statement” (305).

5

The Author mentions a penalty for one who tries to upset a proceeding decided according to law and justice

10

**Yājñavalkya, Verse 306**

One who although defeated according to law and justice, still thinks ‘I am not conquered’ such a one coming again (into Court) shall be made to pay double (the amount as) fine, when he is defeated.

15

**Mitākṣharâ**:—He, moreover, who although defeated after a legal procedure, (still) impudently thinks ‘I am not defeated’, such a one coming again into the court of law by adducing evidence of false documents and the like, after he is again defeated at a legal trial, should be made to pay double the amount of fine.

20

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It has also been said by **Nârada**<sup>1</sup>: “If a man is of opinion that “the suit has been decided and punishment declared in a way contrary to justice, he may have the cause tried once more, provided “he should pay twice the amount of the fine inflicted.” *Tîrîtam*, ‘decided’ i. e. by means of the documentary evidence, witnesses, &c. but where the fine was not pronounced. *Uddrhta-dandam*, ‘where the punishment is declared,’ i. e. which has been carried to the stage of the declaration of the fine.

25

Again, as for the text of **Manu**<sup>2</sup>: “Whenever a suit has been “decided, or a fine declared, a wise man should consider it as (finally) “decided, and must not annul it,” it means that, in cases where a doubt arises as to the legality of a decision on account of the complaint either of the plaintiff or of the defendant, the same may again be judicially tried after having first affirmed him to (pay) a double fine,

30

and not that even when the cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c.

Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation, *vide* the text<sup>1</sup>: “What  
5 “has been decided through ignorance<sup>2</sup> by another king, and in de-  
“parture from the principles of justice, even that should be made good  
‘according to law, after weeding out the injustice.”

Vîramitrodaya

10 Yājñavalkya, Verse 306

The disputant who out of suspicion as to the honest character of the first investigation regards oneself as not defeated according to law, such a one, when the other side succeeds against him again, the first party should be compelled to pay him as penalty twice the amount  
15 in dispute ( 306 ).

Śûlapâṇi

Yājñavalkya, Verse 306

Although defeated by a judicial decision, one who thinks that he is not defeated, such a one after he is defeated again at court shall be compelled  
20 to pay as penalty twice the amount of the former penalty. So says Nârada :<sup>3</sup> “If a man is of opinion that the suit has been decided and  
“punishment declared in a way contrary to justice, he may have the case  
“tried once more provided he should pay twice the amount inflicted”.  
‘Decided’ *i.e.* completed; ‘decision declared’ *i.e.* deposed to by the witnesses.

For one who when defeated destroys himself by the poison or the like  
25 Bṛhaspati states: “He who destroys himself by poison, hanging, or  
with weapon, such a one shall after death be besmeared with fœces; he  
does not deserve any rite” (306).

1. The Author of this text is not known. Neither Bâlabhāṭṭa nor Viśve-  
śwara mention the name.

2. There is an error in the print of the text at p. 160 l. 8.

For राजा ज्ञानकुतं read राजाज्ञानकुतं.

3. Ch. I. 65.

The Author indicates the devolution of wealth unjustly recovered as a fine

Yājñavalkya, Verse 307

What has been obtained, through injustice by the king as a fine, having dedicated it to Varuṇa, he should give it himself to the Vipras (after) increasing it thirty-fold. 5

Mitākṣharâ :—That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brâhmanas after mentally dedicating thus, "This to Varuṇa." And as much was taken unjustly in the form of a fine from a party so much should be repaid to him; otherwise there would be the offence of theft; and also as the fine was recovered unjustly, the right of ownership of the first owner remained unaffected 10

"This interpretation of the Dharma-S'âstra is the comoposition of "Vijñāneśvara himself, a Yogin and a disciple of the sage bearing the title of Uttama (1). 15

"Thus has been set out the commentary on the Vyawahâra "Kāṇḍa of the Sage Yājñavalkya, saturated with sweet language—terse, but direct, and (at the same time) expounding the deep meaning (in it) (2). 20

"The composition called Mitākṣharâ has been set out by me in "language deep (in meaning) and clear (in expression), wide in "import (although) terse in form (3).

"The Interpretation of the work of the Sage Yājñavalkya, thus "concluded, to what learned man will it not be acceptable? Though 25 "extremely concise in words, it is as extensive in import, and sprinkles "the immortal nector (of learning) on the ears (4).

"Thus ends the Second Chapter called the Vyawahâra of the "commentary called the Rju-Mitākṣharâ on the Treatise on Dharma- 30 "śâstra by Yājñavalkya, being a work of Vijñāneśvara Bhaṭṭâraka, the "leader of the Ascetics of the blessed Paramaharṇsa, order, and the "son of the worthy Padmanâbha Bhaṭṭa Upâdhyâya."



## Vîramitrodaya

5 A penalty has been stated to be recovered according to Śâstras; if, however, a penalty not according to Śâstra is caused to be recovered by the king, then the king himself is the offender and he himself should pay the penalty; so the Author says

## Yājñavalkya, Verse 307

10 *Anyâyena*, 'through injustice', i. e. not in accordance with the Śâstra; *yo danḍo gr̥hītaḥ*, 'the penalty which has been recovered', *tam*, 'that', penalty increased thirty-fold *varuṇāya nivedya*, 'having dedicated to Varuṇa' i. e. *utsrjya*, having offered to Varuṇa, himself to the Brâhmaṇas should give, i. e., make over.

Thus ends in the commentary called Vîramitrodaya on Yājñavalkya the Chapter known as the 'Miscellaneous title of law.'

## Śûlapâṇi

15

## Yājñavalkya, Verse 307

The penalty which was unjustly recovered, he should first offer to Varuṇa and afterwards making it three-hundred-fold should himself give to the Brâhmaṇas ( 307 ).

20 *Manu*<sup>1</sup> states the fruit of holding a judicial trial: "In this manner a king bringing to a conclusion all these titles of law, washing away all sins he attains to the highest state." Having observed i. e. having investigated, is to be understood. He<sup>2</sup> mentions the fruit for the punishable:—

25 "Human beings who have committed sins and who have been punished by the kings, (thus) purified go to heaven like meritorious men. Thus by the guilty being punished and the law purified and established, the king enjoys the fruit thereof along with the subjects. "Where the rule of punishment has not been stated by any of the good people, there taking into consideration the place, the time, etc., the punishment is to be declared; this is the rule."

30

Thus in the commentary of Yājñavalkya by Śûlapâṇi ends the Second Book.

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1. Ch. VIII. 421.

2. Manu VIII. 319.

A List of Chapters in this Book is being stated.

Chapter	I	On the General Rules of Procedure.
"	II	" Special Rules of Procedure.
"	III	" Recovery of Debts.
"	IV	" The Law of Deposits.
"	V	" Witnesses.
"	VI	" Documents
"	VII	" Ordeals.
"	VIII	" The Distribution of Dâya.
"	IX	" Boundary Disputes.
"	X	" Disputes between owners and herdsmen.
"	XI	" Sale without Ownership.
"	XII	" Resumption of Gifts.
"	XIII	" Rescission of Purchase.
"	XIV	" Breach of Contract of Service.
"	XV	" Transgression of Compact.
"	XVI	" Non-payment of Wages.
"	XVII	" Gambling and Betting on Animals.
"	XVIII	" Abuse.
"	XIX	" Assault.
"	XX	" Sâhasa or Heinous Offences.
"	XXI	" Non-Delivery after sale.
"	XXII	" Trading by Partnership.
"	XXIII	" Theft.
"	XXIV	" Adultery with Women.
"	XXV	" Miscellaneous : <i>Prakîrṇa</i> .

Thus, in all, there are twenty-five Chapters.

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FINISH.